ZB# 00-60

Michael Garguilo / Timothy Lyons

56-1-24

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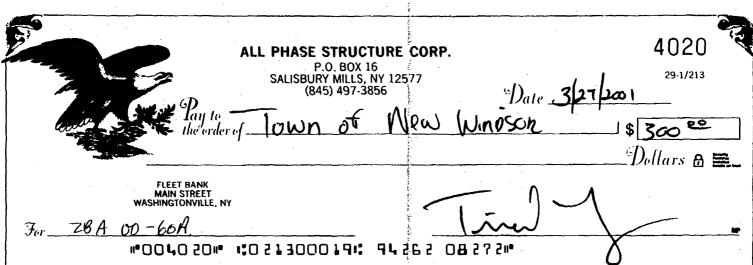
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APPLICANT: Lyon, Tim/Can	FILE#_60A.
RESIDENTIAL: \$50.00 INTERPRETATION: \$150.00	COMMERCIAL: \$150.00
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APPLICATION FOR VARIANCE FEE	\$ 50,00 ford
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DISBURSEMENTS:	
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PRELIMINARY MEETING-PER PAGE 2ND PRELIMINARY-PER PAGE	%: 14\$ <u>63.00.</u> \$
ATTORNEY'S FEES: \$35.00 PER MEEET	TING
PRELIM. MEETING: 24/01 2ND PRELIM. 3RD PRELIM. PUBLIC HEARING. 4/9 PUBLIC HEARING (CONT'D).	
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APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)
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AREA \(USE \) APPLICATION FOR VARIANCE FEE \(\sigma \) * * * * * * * * * * * * *
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TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE NEW WINDSOR, NEW YORK 12553

TO All Phase Structure 1, LLC DR 25 South St., Apt. 2F-R Washingtonivelle, n.y. 10992

DATE		CLAIMED	ALLOWED
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	Approved: Patricia C. Corsetti ZBA.		1
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NEW	WINDSOR	ZONING	BOARD (OF APPEALS

56-1-24

In the Matter of the Application of

MEMORANDUM OF DECISION DENYING AREA VARIANCE

GARGIULO/LYONS

	#00-60A.	,	-
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WHEREAS, MICHAEL GARGIULO, owner, 7705 Sixth Avenue, Brooklyn, N. Y. 11209, and TIMOTHY LYONS, prospective purchaser, 25 South Street, Washingtonville, N. Y. 10992, have made application before the Zoning Board of Appeals for 11,975 sq. ft. lot area variance to permit construction of a single-family residence on Toleman Road in an R-3 zone; and

WHEREAS, a public hearing was held on the 9TH day of April, 2001 and continued on the 24th day of May, 2001 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, Applicant, Timothy Lyons, appeared with Daniel J. Bloom, Esq. for this Application; and

WHEREAS, there were 6 spectators appearing at the April 9, 2001 public hearing; none appearing for the continuation of the hearing on May 24, 2001; and

WHEREAS, the majority of the spectators appearing on December 11, 2000 spoke in opposition to the Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the continued public hearing denying the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

- 1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in <u>The Sentinel</u>, also as required by law.
 - 2. The evidence presented by the Applicant showed that:
- (a) The property is an unimproved lot in a neighborhood of one and two-family homes.
 - (b) The Applicant proposes to construct a one-family home on the lot.

- (c) The one-family home, if allowed, would be constructed so that it would meet all requirements of the Zoning Local except that of lot area.
- (d) The lot area of the lot is substantially less of that allowed by the Town of New Windsor Zoning Local Law.
- (e) The property is situated so that access to the property is by a public road which must pass through a narrow railroad tunnel.
- (f) This property was the subject of previous applications made under file #91-24 and #01-60.
- (g) Dimensions of the lot and its location have not changed since either Application.
 - (h) The instant Applicant has proposed building a house somewhat smaller than that of the earlier Applicant.
 - (i) Applications #91-24 and #01-60 were for lot area variances and did not request any other variances.
 - (j) The railroad tunnel on the public road abutting this premises is so narrow that it will only allow the passage of one motor vehicle at a time and will not accommodate two motor vehicles passing in opposite directions at the same time.
 - (k) The lot is not served by either municipal sewer or water.
 - (1) The available lot area of the lot which is the subject of this Application is significantly less than that required by the Town Code.
 - (m) The Applicant submitted evidence from Richard Dekay, L.S. that the parcel in question has had the same dimensions and has the same since before 1900.
 - (n) There is no direct evidence of the present owner (Gargiulo's) intent when purchasing the property. The comments of Applicant Lyon's attorney appear to be of a speculative nature with regard to Mr. Gargiulo's intent.
 - (o) The Applicant Lyons has tried but has been unable to purchase any additional contiguous land to make this lot conforming as to area.
 - (p) Applicant Lyons now argues that because the lot existed prior to Zoning it is a preexisting, non-conforming use and under the laws of the State of New York, building on it should be permitted.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

- 1. The requested variance will not produce an undesirable change in the character of the neighborhood but will create a detriment to nearby properties because of the safety hazard.
- 2. Development of this personal property will increase the traffic on the adjacent roadway which cannot accommodate additional usage due to the presence of a railroad tunnel constricting the property.
- 3. There is no other feasible method available to the Applicant which can produce the benefits sought.
- 4. The variance requested is substantial in relation to the Town regulations and is not warranted for the reasons listed above.
- 5. The requested variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
- 6. The difficulty the Applicant faces in conforming to the bulk regulations is self-created and should not be allowed.
 - 7. The benefit to the Applicant, if the requested variance is granted, does not outweigh the detriment to the health, safety and welfare of the neighborhood or community.
 - 8. The requested variance is not appropriate.
 - 9. The interests of justice will not be served by allowing the granting of the requested area variance.
 - 10. Under Section 48-26(E) there are 8 restrictions listed on the use of property as a preexisting, non-conforming lot of record. Since this lot does not have central sewer and water as required by (II) this Board finds that it does not enjoy the status of a preexisting, non-conforming lot under the New Windsor Town Code.
 - 11. The Zoning Board of Appeals does not reach the questions of whether this lot meets the other 7 criteria listed under Subsection (II) since its failure to meet Subsection (II) renders these questions moot.
 - 12. The Applicant Lyons, through his attorney, has raised a question of the unconstitutionality of the New Windsor statute but the Zoning Board of Appeals presumes, as it must, that that statute is constitutional until a court of competent jurisdiction overrules otherwise.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor DENY a request for a 11,975 sq. ft. lot area variance to allow construction of a single-family residence in an R-3 zone, as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: July 9, 2001.

Chairman

NEW WINDSOR ZONING BOARD OF APPEALS 56-1-24 MEMORANDUM OF DECISION DENYING AREA VARIANCE #00-60.

WHEREAS, MICHAEL GARGIULO, owner, 7705 Sixth Avenue, Brooklyn, N. Y. 11209, and TIMOTHY LYONS, prospective purchaser, 25 South Street, Washingtonville, N. Y. 10992, have made application before the Zoning Board of Appeals for 11,975 sq. ft. lot area variance to permit construction of a single-family residence on Toleman Road in an R-3 zone; and

WHEREAS, a public hearing was held on the 11TH day of December, 2000 and continued on the 8th day of January, 2001 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, Applicant, Timothy Lyons, appeared with Daniel J. Bloom, Esq. for this Application; and

WHEREAS, there were 11 spectators appearing at the December 11, 2000 public hearing; none appearing for the continuation of the hearing on January 8 2001; and

WHEREAS, the majority of the spectators appearing on December 11, 2000 spoke in opposition to the Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the continued public hearing denying the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

- 1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in <u>The Sentinel</u>, also as required by law.
 - 2. The evidence presented by the Applicant showed that:
- (a) The property is a residential property consisting of a one-family home located in a neighborhood containing two-family homes.

- (b) The property meets all zoning requirements except that of lot area which is substantially less of that allowed by the Zoning Local Law.
- (c) The property is situated so that access to the property is by a public road which must, however, pass through a narrow railroad tunnel.
- (d) This property was the subject of a previous application made under file #91-24.
 - (e) Circumstances of the lot and its location have not changed since the original

Application.

- (f) The instant Applicant has proposed building a house somewhat smaller than that of the earlier Applicant, but the earlier application was for a lot area variance and did not require any other area variances.
- (g) Both the earlier Application and this Application, the use was and is a permitted one and the Applicant seeks only an area variance for the area of the lot.
- (h) The railroad tunnel on the public road abutting this premises is so narrow that it will only allow the passage of one motor vehicle at a time and will not accommodate two motor vehicles passing in opposite directions at the same time.
- (i) The lot is not served by either municipal sewer or water.
- (j) The available lot area of the lot which is the subject of this Application is significantly less than that required by the Town Code.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

- 1. The requested variance will produce an undesirable change in the character of the neighborhood and will create a detriment to nearby properties.
 - Development of this personal property will increase the traffic on the adjacent roadway which cannot accommodate additional usage due to the presence of a railroad tunnel constricting the property.
 - 3. There is no other feasible method available to the Applicant which can produce the benefits sought.

- 4. The variance requested is substantial in relation to the Town regulations and is not warranted for the reasons listed above.
- 5. The requested variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
- 6. The difficulty the Applicant faces in conforming to the bulk regulations is self-created and should not be allowed.
 - 7. No information was presented to the Board about the present owner, Gargiulo, whether or not he was aware of the restrictions permitting building at the time he acquired the lot. The present Applicant, Lyons, apparently a contract vendee and is aware of the restrictions on the lot prohibiting building thereon.
 - 8. The benefit to the Applicant, if the requested variance is granted, does not outweigh the detriment to the health, safety and welfare of the neighborhood or community.
 - 9. The requested variance is not appropriate.
- 10. The interests of justice will not be served by allowing the granting of the requested area variance.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor DENY a request for a 11,975 sq. ft. lot area variance to allow construction of a single-family residence in an R-3 zone, as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: March 12, 2001.

cc: 26A

Bloom & Bloom, P.C.

ATTORNEYS AND COUNSELORS AT LAW

DANIEL J. BLOOM
PETER E. BLOOM

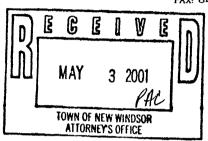
530 BLOOMING GROVE TURNPIKE
(AT THE PROFESSIONAL CIRCLE)
P.O. BOX 4323
NEW WINDSOR, NEW YORK 12553

TELEPHONE (845) 561-6920

FAX: 845-561-0978

April 23, 2001

Chairman, Town Planning Board Town of New Windsor Town Hall 555 Union Avenue New Windsor, NY 12553



RE: APPLICATION OF TIMOTHY LYONS

Area Variance and/or Declaration of Pre-existing Non-conforming Use

For Premises: 53-1-24 Our File No. R-9199

Dear Sir:

At the close of the "Public Hearing" held in this matter before your Board on April 19, 2001, the Acting Chairman, Mr. Torley, invited further written submission from the applicant. In accordance with that invitation, I respectfully submit the following information supplementary to the presentation made on behalf of my client at that meeting:

- a.) **Prior Municipal History**: The present owner of the property, Michael Garguillo purchased the premises in 1986 and applied for an area variance on March 9, 1992. The variance was denied by this Board citing the following bases for the same (among others):
- i.) The applicant at that time refused to explore the alternative of purchasing more land from an adjacent property owner.
- ii.) Thus, that applicant not only purchased the premises with knowledge of its non-conforming status, but also refused to take any action to alleviate that condition.

Bloom & Bloom, V.C.

April 23, 2001 Page 2

- b.) <u>Distinguishing Factors in the Application of Timothy Lyons:</u> On the other hand, applicant before this Board at this time presents the following distinguishing factors from the prior application:
- i.) He has not closed title on the premises, but rather has made his contract to purchase the property subject to obtaining approval from this Board.
- ii.) Mr. Lyons has submitted to this Board survey and engineering demonstrating the feasibility of constructing a residence on the premises with a septic system without the requirement for any other variances.
- iii.) Mr. Lyons also attempted to purchase more land from the only contiguous landowner who indicated that he under no circumstances would ever sell Mr. Lyons any additional property at any price. (See the affidavit of Timothy Lyons submitted to this Board at the Public Hearing on April 19, 2001).
- iv.) The present owner of the premises (Garguillo) has now been paying taxes on the property without the benefit of any use of the same since 1986 (over sixteen (16) years).
- v.) Evidence has been presented to this Board by Mr. Lyons indicating that the residence he wishes to construct will be small (two (2) bedrooms) to complement the aesthetics of the neighborhood. Moreover, the premises are not visible to any of the immediately surrounding landholders.
- c.) Pre-existing Non-conforming Use: At the Public Hearing held on April 19, 2001, Mr. Lyons presented the testimony of Richard DeKay, L.S. who testified that he researched the origin of the parcel back to 1865 and determined that it was created in its present form in or about 1916, when the railroad crossing was constructed across Toleman Road and that configuration has not changed to date. Accordingly, it is respectfully suggested to this Board that the lot constitutes a "pre-existing non-conforming use" and therefore, the applicant is entitled to the issuance of a building permit as a "vested right". (See matter of Bexson v. Board of Zoning and Appeals of Town of Hempstead, 28 AD2d 848, Aff'd. 21NY2d 961 a copy of said opinions are attached hereto).

Bloom & Bloom, P.C.

April 23, 2001 Page 3

d.) <u>Conclusion</u>: It is respectfully submitted to this Board that the applicant's intended use of the premises for the construction of a two (2) bedroom single family residence he intends to utilize as his own personal residential home, would constitute an unobtrusive as well as a pleasing addition to the neighborhood and, therefore, an area variance would be appropriate under the circumstances. Alternatively, this Board is further urged to conclude that the premises constitute a pre-existing non-conforming use justifying the issuance of a building permit to the applicant based upon doctrine of "vested rights". ". (See matter of <u>Bexson v. Board of Zoning and Appeals of Town of Hempstead</u>, <u>supra</u>).

Thank you for your continuing consideration of my client's application.

Sincerely yours,

DANIEL J. BLOOM

DJB:et

cc: Andrew S. Krieger, Esq.

219 Quassaick Avenue New Windsor, NY 12553

(Via Fax #562-2407 and First Class Mail)

cc: Mr. Timothy Lyons

P.O. Box 16

Salisbury Mills, NY 12577

Page 1 of 3

Service: LEXSEE® Citation: 28 ad2d 848

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28 A.D.2d 848, *; 281 N.Y.S.2d 569, **; 1967 N.Y. App. Div. LEXIS 3633, ***

In the Matter of JOAN BEXSON, Respondent, v. BOARD OF ZONING AND APPEALS of the TOWN OF HEMPSTEAD, Appellant.

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

28 A.D.2d 848; 281 N.Y.S.2d 569; 1967 N.Y. App. Div. LEXIS 3633

July 5, 1967 - Decided

CORE TERMS: variance, practical difficulties, zoning ordinance, dwelling, vendee, feet, confiscation, ordinance, vendor, building permit, reasonable use, ownership, hardships, neighbor, plot, strict compliance, subject property, marketable, compelled, renewed, selling, yard

OPINION: [***1]

[*848] [**570] Judgment of the Supreme Court, Nassau County, dated October 14, 1966, affirmed, with costs. Petitioner, the contract vendee of a lot approximately 2,500 square feet in area, applied for a permit to construct a one-family house measuring 17 feet in width and 48 feet in depth. The lot had been held in single ownership prior to the enactment of the zoning ordinance. The lot was located in a district which provided that no dwelling might be constructed on a lot less than 6,000 square feet in area and having two side yards of less than 15 feet in the aggregate or less than 5 feet separately; the ordinance further provided that, in the case of a lot singly held in ownership from a time prior to October 25, 1957, the area [*849] requirements applicable to the lot were reduced to 4,000 square feet. The permit was denied by the building inspector on the ground that the dwelling as proposed violated these provisions. The petitioner then sought a variance of the provisions of the zoning ordinance from the Board of Zoning and Appeals. At the hearing an owner of abutting property testified that he had offered to purchase the lot from the owner and contract vendor [***2] some years before, and that the owner had said that he was not interested in selling it. The abutting neighbor also testified that he would pay the same price that the contract vendee was paying. The Board of Zoning and Appeals denied the application for a variance, finding that the lot had been held in single ownership from a date antedating the zoning ordinance, and that the reduction of the side yard to 4 feet on each side was an excessive request. Special Term annulled that determination, and the Board appeals. The lot was a nonconforming use which survived the regulations imposed by the zoning ordinance which would render it useless (Matter of Mandalay Constr. v. Eccleston, 9 A D 2d 918; Hammond v. Town of Caldwell, 282 App. Dlv. 798; Matter of Land Purchasing Corp. v. Grunewald, 20 Misc 2d 175). Otherwise, the owner would be deprived unconstitutionally of * his property. Quite clearly, the owner and the contract vendee would be unable to meet the literal requirements of the [**571] ordinance; hence, the board was not justified in refusing the variance permitting the erection of the dwelling. On this record, we cannot say that the offers [***3] to purchase the lot from the adjoining property owner nullified the existing right to use it for dwelling purposes. We note that there was no evidence that any concrete offer was made prior to the sale to the contract vendee, and the offer made subsequent to the contract was, of course, too late. Moreover, an owner is free to deal with anyone in the sale of his property, and we think that he may not be compelled to sell to a neighbor at the pain of losing a vested right. Special Term was, therefore, correct in annulling the determination of the board, and permitting the improvement of the lot with a dwelling. Christ, Acting P.J., Hopkins and Munder, J., concur; Benjamin, J., dissents with the following

memorandum, in which Brennan, J., concurs; Petitioner maintains that there are practical difficulties and unnecessary hardships in requiring strict compliance with the ordinance, in that no legal use can be made of the property and that, unless use is allowed, the constitutional protection against the taking of property without due process of law is violated. A Board of Appeals may determine that a plot cannot be used for a particular purpose, that the public interest requires [***4] that such use be forbidden and thereby deny a variance. If, however, a board forbids a use and no reasonable use for the property remains, it amounts to a taking of the property (Matter of Waldorf v. Coffey, 5 MIsc 2d 80; Arverne Bay Constr. Co. v. Thatcher, 278 N. Y. 222). Clearly, then, if there is no reasonable use for the subject property, the failure to grant a variance to petitioner would amount to a confiscation. In opposition to the application, the abutting land owner testified that he had in the past offered to purchase the land in question but the contract vendor declined to sell. The abutting owner asked that he be informed of any change of mind as he was interested in enlarging his property. When he heard of the current application, he renewed his offer to the contract vendor at the same price as in the contract herein. This, in my opinion, demonstrates the marketability of the subject property. The vendor or vendee could sell the plot for a sum equal to the contract price. If the property is marketable without the variance, at the same value as with the variance, the petitioner cannot claim the denial of the variance to be confiscatory, [***5] as a reasonable use exists. [**572] The fact that the second offer was made subsequent to the contract is immaterial as the contract was conditioned [*850] upon petitioner's obtaining a building permit. I agree with the majority that an owner is free to deal with any one in the sale of his property and that he may not be compelled to sell to a neighbor. While his freedom of action in selling his property is absolute, the right to a variance is not, when alternatives exists which would result in avoiding the alteration of the character of the neighborhood without financial sacrifice to the owner. Should subsequent events after the circumstances, the application for a variance could be renewed. Presently, the property in question is marketable at a reasonable price. It cannot, then, be said that there are practical difficulties and unnecessary hardships nor a confiscation in requiring strict compliance with the zoning ordinance. Matter of Karras v. Michaelis (19 N Y 2d 449) is Illustrative of the principle that the court will look to the realities of confiscation by reason of the alleged practical difficulties. There the court found that, since the award [***6] in condemnation had made provision for the consequential damages to the remaining piece, the claim of confiscation because of practical difficulties could not stand. Where there is a claim of practical difficulties or unnecessary hardships in the strict observance of the ordinance, the board is required to act so as to promote the public safety and welfare and to secure substantial Justice (Town Law, § 267, subd. 5). This can only mean justice to the landowner and justice to the community. The board found that the variance, if granted, "would have an adverse affect on the health, safety and welfare of the area, as well as a depreciating affect on the value of the real property located proximate to the subject plot". The substantial interest of the community in its maintenance should not be upset save where the constitutional rights of the individual property owner are threatened. The granting of the variance would be, as determined by the local body, injurious to the community. Denial of the variance would injure no one. It is obvious from the act of conditioning the contract of sale on the grant of a building permit that the petitioner knew the lot to be substandard prior [***7] to entering into the contract and cannot now be heard to complain. In addition, denial of the variance and the consequential denial of a building permit removes his obligations under sald contract. The contract-vendor has, as set forth above, a fair market for the property and will suffer no monetary loss. In denying the application, the board acted within the power conferred upon it by law and arrived at a just result. I would reverse and reinstate the determination of the Zoning Board of Appeals with leave to renew the application for a variance if justice should ultimately so require.

Service: LEXSEE®
Citation: 28 ad2d 848
View: Full

Date/Time: Monday, April 23, 2001 - 10:36 AM EDT

Page 1 of 2

Service: LEXSEE® Citation: 21 ny 2d 981

> 21 N.Y.2d 961, *; 237 N.E,2d 239; 1968 N.Y. LEXIS 1473, **; 289 N.Y.S.2d 990

In the Matter of Joan Bexson, Respondent, v. Board of Zoning and Appeals of the Town of Hempstead, Appellant

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

21 N.Y.2d 961; 237 N.E.2d 239; 1968 N.Y. LEXIS 1473; 289 N.Y.S.2d 990

February 29, 1968, Submitted April 10, 1968, Decided

PRIOR HISTORY: [**1]

Matter of Bexson v. Board of Zoning & Appeals of Town of Hempstead, 28 A D 2d 848.

Appeal from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered July 5, 1967, which affirmed, by a divided court, a judgment of the Supreme Court at Special Term (Joseph Liff, J.), entered in Nassau County, in a proceeding under CPLR article 78, (1) annulling a determination of the Board of Zoning and Appeals of the Town of Hempstead which had denied a request by petitioner for a variance and (2) directing that the variance be granted. Petitioner, contract vendee, had requested a variance to permit a residence construction on a parcel of property 100 feet long and 25 feet wide which had been held in single and separate ownership from a date prior to the adoption of the Zoning Ordinance of the Town of Hempstead. Section B-10.1 of article 5 of the Building Zone Ordinance of the Town of Hempstead provided that no dwelling should be constructed on a lot unless it contained an area of not less than 6,000 square feet and further provided that the maximum lot width and area and frontage regulations should not apply to any lot having less than the prescribed [**2] measurements, provided such lot had an area of at least 4,000 square feet. Section B-5.1 of article 5 provided that, in the case of a single-family dwelling, there should be two side yards, the aggregate width of which should be at least 15 feet. Petitioner applied for a permit to construct a one-family dwelling to be two stories in height with measurements of 17 feet in width and 48 feet in depth. The permit was denied by the Building Department on the ground that the property was only 2,500 square feet in size and the side yards did not total 15 feet. The court at Special Term stated that "an owner of a parcel made substandard by the adoption of an ordinance may not be denied (absent proceedings in eminent domain) the right to reasonable use of his property." In the Court of Appeals appellants argued that there is no confiscation under the zoning ordinance if a reasonable use existed for property and that there was evidence that offers to buy the property had been tendered to the owner at a price equal to that called for under the contract of petitioner, contract vendee.

DISPOSITION: Affirmed,

HEADNOTES:

Municipal corporations -- zoning -- area zoning -- petitioner, contract vendee, requested [**3] variance to permit construction of residence 17 feet by 48 feet on parcel of property 25 feet by 100 feet, held in single and separate ownership prior to adoption of zoning ordinance which required at least 4,000 square feet in residence plot and side yards with aggregate width of 15 feet -- Special Term annulled determination of Board of Zoning and Appeals which had denied variance, stating that owner of parcel, made substandard by adoption of ordinance, may not

be denied reasonable use of property -- judgment properly affirmed.

COUNSEL: Howard E. Levitt, Town Attorney (Ronald J. Levinson of counsel), for appellant.

Robert D. Kops for respondent.

JUDGES: Concur: Judges Burke, Scileppi, Bergan and Breitel. Chief Judge Fuld and Judges Keating and Jasen dissent,

OPINION: [*963] Order affirmed, with costs; no opinion. Chief Judge Fuld and Judges Keating and Jasen dissent and vote to reverse for the reasons stated in the dissenting opinion at the Appellate Division.

Service: LEXSEE® Citation: 21 ny 2d 961 View: Full

Date/Time: Monday, April 23, 2001 - 10:37 AM EDT

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TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE NEW WINDSOR, NEW YORK 12553

	Frances Roth	
TO	168 H. Drury Lane	DR.
	Newburgh Nily Lane	
	Newburgh, N.Y. 12550	

DATE		CLAD	KED	ALLOWED
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	Mc Curry - 3			
	Courguilof Lyons - 4 18.00			
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GARGUILO/LYONS

MR. TORLEY: Request to re-appear for 11,975 square foot lot area variance for vacant lot on Toleman Road in R-3 zone based on new evidence.

Daniel Bloom, Esq. appeared before the Board for this proposal.

MR. BLOOM: Good evening, Mr. Chairman. Dan Bloom representing the applicant, sirs. My client is with me, Mr. Timothy Lyons. Gentleman, as you know, we appeared before you in November on this application at a public hearing and the application was denied. then, my client has contacted the contiguous landowner and approached him for the purpose of buying more land so that we could make it a conforming use. landowner indicated that he wasn't interested in negotiating any price at all. He just simply refused to sell client any portion of his property. reason, I respectfully request permission to have another public hearing at this time, even though it's been a short period of time since the last application, based upon what I respectfully submit to this Board to be new evidence which is in my opinion cogent enough to warrant another hearing before the public on the application of my client to build a house on this particular lot. This lot, as the Board may recall, has been vacant of any construction whatsoever since So that's means the landowner's been paying taxes since 1986 on this land and conceivably will pay it in perpetuity at the rate things are going unless my client has an opportunity to build a house on it, which, as we indicated before -- would require not We're seeking approximately a 20 to other variances. 25 percent variance of the area, and we indicate through the photographs already before the Board that it will not only not impact adversely upon the surrounding community, but rather enhance the environment, enhance the aesthetics based upon the fact that we'll have a well-received residence on this particular lot. This residence will not be visible to any of the surrounding residences in the community. There was a concern about sight distances between the proposed residence and the railroad trestle. And my client and I have both walked it. And I respectfully submit to this board that it is an open line of sight, and that in fact the size of the aperture of the trestle is such that two cars can't pass safely at the same time. So, in fact, what happens is the traffic is

actually slowest at this point on Toleman Road. So based upon that, I come before you this evening and respectfully request permission to be scheduled for a public hearing for reconsideration based upon these new developments.

MR. TORLEY: Andy, as I recall, the code requires in order to grant them an early rehearing, which is really what this is, we have to find sufficient --

MR. REIS: Bear in mind it's two months we're talking about. When he talked about time, I was counting here that the application was heard four months ago. So you're basically talking about --

MR. TORLEY: Well, a public hearing was held this calendar year, was it not? The date of the public hearing?

MR. KANE: Was adjourned to January 8th, 2001. The first public hearing was December 11th, 2000.

MR. BLOOM: Right.

MR. KANE: And then it was adjourned to the 8th.

MR. TORLEY: Now, this was an area variance request. And your request for saying sufficient new evidence is that the lot is still the same size?

MR. BLOOM: No. The new evidence I submit, Mr. Torley, is that my client approached the surrounding landowner and attempted to buy sufficient property from him so that's we wouldn't have a non-conforming use, and he was just flatly denied to negotiate any price whatever, even an exorbitant price he wouldn't discuss with him. And I recall on the last application at the public hearing that that inquiry was directed to my client had he approached any of the landowners and he indicated that he had not. So having done so, having had this negative response, I just felt it appropriate on behalf of my client to come back and seek further consideration this board.

MR. TORLEY: As opposed -- if this was allowed to be taken up, I gather it has to be a unanimous vote, am I correct on that?

MR. KRIEGER: To set him up for a public hearing?

MR. TORLEY: To take him back up before the six month time frame. I believe, that's my recollection but I could be incorrect on that.

MR. REIS: For the record, Mike Reis has to recuse himself in this because he was involved in the sale of the property.

MR. KRIEGER: With that recusal, you wouldn't have a quorum to take a vote now so you have to --

MR. TORLEY: We have three.

MR. KRIEGER: Oh, sorry, yes. Okay.

MR. KANE: Dual role.

MR. KRIEGER: As I was.

MR. KANE: I see no reason, four months have been passed, to not set him up if he wants to go through the expense to come back for another public hearing.

MR. TORLEY: Remember, you would be starting again from ground zero.

MR. BLOOM: That's correct. We understand.

MR. TORLEY: And your applicant does the notification and all.

MR. BLOOM: Yes.

MR. LYONS: Yes.

MR. McDONALD: Accept a motion?

MR. TORLEY: Very well. Well, before you do that, is this legally considered sufficient evidence for expedited review or rehearing?

MR. KRIEGER: Well, as I remember the way the statute is written, the answer to your question is yes.

MR. TORLEY: Thank you.

MR. McDONALD: Make a motion we set Mr. Lyons up for a public hearing.

MR. KANE: Second the motion.

ROLL CALL

MR. McDONALD AYE MR. KANE AYE MR. TORLEY AYE

MR. KANE: Patty hasn't left me anything right here to give you for this.

MR. BLOOM: Actually, I've already submitted it. In anticipation of a favorable response, we had already submitted the application.

MR. KANE: Double check with Pat tomorrow or whenever she's feeling better.

MR. TORLEY: More than likely, be prepared to discuss at preliminary and public hearing the history of the property.

MR. BLOOM: I will.

MR. TORLEY: And also make sure that the applicant's, all the neighbors get notified.

MR. BLOOM: Absolutely.

MR. KANE: That they have to legally do for public hearing again any way. Again, check with Patty to see if there's anything else you have to do.

MR. BLOOM: I will.

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TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE NEW WINDSOR, NEW YORK 12553

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PUBLIC HEARINGS:

GARGUILO/LYONS

Daniel Bloom, Esq. appeared before the board for this proposal.

MR. TORLEY: Request for 11,975 square foot lot area variance for construction of single-family residence on Toleman Road in an R-3 zone. For those of you who wish to speak in this matter, please sign so we have your name and address accurately for the record. For the record, note from Pat Corsetti that on the 27th of March, we mailed out 12 addressed envelopes regarding public hearing notice relevant to this meeting.

MR. REIS: May I, just for the record, recuse myself from the public hearing. I'm involved with the sale.

MR. BLOOM: Good evening, gentlemen, my name is Dan Bloom and I am representing the applicant this evening. By way of a little bit of background, as you know, my client was before you commencing in November of last year seeking this same variance. And the variance was ultimately denied following a meeting in January of this year and then I came before you again and asked permission to come back in based upon what I respectfully submitted was some new material to be considered and you gave me graciously the opportunity to do that and we're here this evening pursuant to that notice of public meeting. I don't want to, I'll be guided of course by this board, but I suggest it would be more appropriate rather than rehash everything that was covered in the last public meeting and I believe the board already has before it, the various photographs and exhibits introduced into evidence, instead, subject to this board's direction, I'd like to direct my comments in accordance with directions I received from Mr. Torley at the last meeting which was he indicated this board was interested in the history of the property and to that end, I've put a considerable amount of time and effort in trying to The immediate history from come up with that history. a legal perspective I determined is as follows. property was purchased in 1986 by Mr. and Mrs.

At the time that they purchased it from Garquilo. information provided to me by their existing attorney present attorney who did not represent them at the time I might say it was their intent to build on the property. I explored with him and with him, his clients through him as to whether or not prior to purchasing the property they applied for a variance for that purpose, or if they've even investigated as to whether or not it was a buildable lot. From what I can determine, they did not investigate it or they purchased it realizing it was not a buildable lot and for some reason, figured they could come in to this board subsequent to the purchase and get permission to Well, they purchased it in 1986. they ultimately came before this board and sought permission for a variance, an area variance, exactly the same area variance we're seeking tonight, I might say, and that application was denied after a public hearing. Now, I read the minutes of the preliminary hearing, I read, pardon me, I read the minutes of the public hearing which reflected the minutes of the preliminary hearing to this extent. The applicant at that time did not appear in person either at the preliminary or the public hearing. He was represented by a real estate agent who had his proxy, Mr. Hanchy (phonetic) was his name. According to the record and at the preliminary meeting, this board directed or requested at least that that representative go around to surrounding land owners and try to purchase additional square footage so perhaps we could obviate or they could obviate the need to come before the board on this application for a variance. And astonishingly to me when I read the minutes that particular individual came back to the public hearing again without his clients who were in Florida allegedly and indicated to the board that he was directed by his clients not to go to the surrounding landowners so it The board reacted accordingly and was never done. indicated that they felt that he did not explore the possibility in that regard. Subsequent to that denial, I determined that my clients made no other applications, they have sought to market the property, they have decided ultimately to give up on the property but continue to pay taxes on the property until my client came along, my client is a builder and as you

know from the prior meeting, he wants to simply build a very modest sized house on this property for himself. The house would comply as we indicated in the prior meeting in all respects with all the zoning requirements of the Town of New Windsor, with the exception of this minimum square footage. I went back and I read the minutes of that meeting and I compared the minutes of that meeting with what we produced for this board at the prior public hearing and the evidence that is before the board at this time and I'd like to respectfully point out that on the prior hearing.

MR. TORLEY: Which prior hearing are you talking about?

MR. BLOOM: The last public hearing held in 1992, thank you, Mr. Torley, 1992, that in addition to refusing the suggestions of the board of not purchasing other property, my client of course has approached the neighbor and has attached to his application tonight an affidavit, sworn affidavit under oath that he attempted to buy more square footage and the next door neighbor's indicated categorically he will not sell anything to my client under any circumstances for any price.

MR. TORLEY: Do we have that affidavit?

MR. BLOOM: Yes, sir, it's attached to the new application which I submitted before the board tonight. For your immediate reference, I will submit, Mr. Torley, with your permission, a copy of mine.

MR. TORLEY: Thank you and I will pass it around. I haven't read this into the record but merely note I received such an affidavit.

MR. BLOOM: If I may at the prior hearing in 1996, the board made a very specific finding.

MR. TORLEY: '92.

MR. BLOOM: Pardon me, 1992, board made a very specific finding that it was a self-created hardship compounded by the fact that he wouldn't even go to the next door neighbor to attempt to buy more property. The board then passed on beyond that determination, it said

although it is a self-created hardship, it's not determinative, they accepted that and went to the next level. At the next level, they decided that they considered in great detail whether or not they could grant the relief by basing the grant of relief upon the fact that it might be a pre-existing non-conforming And apparently, this Mr. Hanchy presented to the board at that time a series of maps and deeds, it's also referred to in the minutes that I read but apparently it was confusing I quess at best, certainly not convincing enough to the board to consider it and basically, the board, as I read the minutes, based its determination that it was a self-created hardship, the applicant refused to take any suggestions from the board to try to alleviate the hardship and then attempted to justify the application further as a pre-existing, non-conforming use and didn't present evidence on that issue either. And realizing that that was the history of the property and the history of the application before this board, I further investigated the question as to the origin of this parcel with a Mr. Richard DeKay, the surveyor that was originally retained by my client to do the survey. And I asked Mr. DeKay to check back in the old maps and try to determine where this parcel came from, when it arrived and how it was developed. And amazingly enough, he determined that in fact this parcel was created back in the early 1900's or even earlier and Mr. Torley, with the board's permission, I'd like to respectfully request permission to have Mr. DeKay address the board at this time and present that evidence.

MR. TORLEY: Sure. Gentlemen, any problems?

MR. KANE: No.

MR. BLOOM: Mr. DeKay is, Richard DeKay is a licensed surveyor, his office is in Cornwall, New York, he did the survey for my client on this application and with respect to the contract that he signed that he purchased it.

MR. DEKAY: I'm Richard DeKay, I have been practicing over 40 years in private practice. This is a farm map of the Town of New Windsor, there's the date, it's

1864.

MR. TORLEY: We're looking at an 1864 dated sketch map with the farms of New Windsor.

That's correct. Right here where it says MR. DEKAY: Blooming Grove, this is Toleman Road right here, see how Toleman Road comes up higher and makes this angle right here, now, you see right here, this map is in bad shape because it's so old, you see right here a light line that's been put on here by the original surveyor in 1964, okay. What happened there in 1918, I just want to show you now you see this outline of this lot, that's the outline, that's that little outline, do you see how it makes that angle, you come over here, do you see right here, this is the tunnel, it's hard to read, it says it's 68 feet long; it's 19 foot concrete arch tunnel under the railroad right here. So now the Toleman Road comes up here and makes an angle, comes under here so what I'm saying is that this line was in existence in 1864, this old stone wall and I showed that on my survey. I have copies here.

MR. TORLEY: So this particular piece of property was cut off from the main stem by the railroad coming through in 1864?

MR. DEKAY: Well, the original farm lawn which is what this represents then the railroad went through, the date on this map is 1918, I believe.

MR. TORLEY: If these are the dimensions of this lot then would have clearly preceded zoning.

MR. BLOOM: That's, we suggest that, Mr. Torley.

MR. DEKAY: See these figures, that represents what you're looking at on the blue map, this line here is represented on the 1864 map so it's a pre-existing lot that's there.

MR. TORLEY: Now, question, I have a question, if a lot and this lot clearly as it was set up precedes the zoning, after zoning, if a non-conforming lot is now transferred in title, does a person who purchases that lot knowing it does not meet existing zoning code, is he entitled to pre-existing, non-conforming lot status?

MR. KRIEGER: I don't think it has anything to do with the knowledge or absence thereof because--

MR. TORLEY: Because it's a self-created hardship if you buy a lot.

MR. KRIEGER: If a lot, the question is whether it's pre-existing, non-conforming, if it's like any other variance, it goes with the land, if it already existed as pre-existing non-conforming use, there's nothing the buyer can do either positively or negatively to affect that status, it has that status. It's not clear from this record whether anybody in the chain of title since then knew or didn't know that it was pre-existing couldn't have known before '66 because there was nothing that pre-exists.

MR. KANE: But the lot itself hasn't changed.

MR. KRIEGER: If the lot hasn't changed then the knowledge of the owner is not going to change like a variance, the status runs with the land. Now, as it turns out in this particular case, the owner, resulting in the '92 hearing, it doesn't sound as if that person was aware that it was a pre-existing, non-conforming use. As I recall, that argument was not presented to the board at that time. So if he was aware he kept it to himself, but it was or it wasn't. Now, it's a difficult test to meet pre-existing, non-conforming because it has to remain that way from the time that zoning was enacted which is now over 30 years ago.

MR. KANE: But it's also a lot that maintained its shape.

MR. KRIEGER: Then it may, the test, though, the test is difficult, it may well meet that test but I don't believe that's what was in the, in the mind of this applicant or his predecessor, the first named applicant here is relevant. I think it's a reasonable interpretation of the evidence that the second named applicant may not have been recently aware of the

status, doesn't mean that it didn't exist, just means that he didn't know about it, that's fine.

MR. TORLEY: All right, forgive me for reading this in the record, maybe you have memorized it, but I haven't, non-conforming lots of record Section 40-26 AA, residential plot separated by other land not in the same ownership and non-conforming as to bulk on the date of the map or the effective date of subsequent zoning local law amendments, whether not located in and part of a subdivision, and approved by the planning board of the Town of New Windsor and filed in the office of Orange County Clerk, which does not have a total plot area specified for residential use in paragraph 48-12 may be used for any use permitted by right in the zoning district in which the plot is located, provided that such uses comply with the bulk and area and yard regulations as specified in the highest residential district having the same or less plot width, where such residential district requires certain utilities, provision of such shall be a prerequisite to its residential use. Ending the reading. Okay, so what does that mean about the highest residential district where this plot width comes in. Do you wish to speak on that?

MR. BLOOM: Honestly have not read that section of the statute, so I don't want to suggest that I am any authority on it. What I have read and what I am familiar with is the law in the State of New York governing pre-existing, non-conforming uses and my understanding of that law has always been very clear that as long as the use pre-existed the adoption of the ordinance, then constitutionally, the state has no right to limit the homeowner's or the owner's use of that lot that's a constitutional issue which supersedes any statute that any township ever adopts in the State of New York. I respectfully suggest otherwise, we're talking about deprivation.

MR. TORLEY: I agree with you on use by improvement is a different story.

MR. BLOOM: It's not a question of improvement, I suggest it's a question of use as a building lot.

MR. TORLEY: While our attorney is studying this matter, let's open it up to the public so we can get their input. Ladies and gentlemen?

Nadir Saint-Prix. MS. NADIR SAINT-PRIX: Last time there was a whole slew of people here and not so much now, but everybody said it's dangerous, this particular area for coming in and out and I want to emphasize morally for myself, but even for you, if there's an accident, I mean, because everybody comes to you if there's an accident, someone's hurt or death, people sue everybody, I mean they can even most probably sue the people who had that property or him who has it. mean, they can sue the Town maybe for permitting such a thing, I mean, but it's very dangerous and it's not the property, it's the location. There's no way for you to come out of that property and see a car coming in. mean, we don't have lights for stop and go and he could hit a button that says go, you know, it would need such a thing because there's no way that he can for the amount of property that he can that he's able to see a car coming. And sometimes they go slow and sometimes they go fast and it's a 40 miles per hour, it's only one lane, but some people don't pay attention, we drive and there are people who pass us in this particular road, it's getting very congested now, we're only there almost two years and it's increased in congestion, that's all, it's a safety issue.

MR. SERGE SAINT-PRIX: I just have to speak. I live at 15 Tolman. Last time many of us presented arguments about safety as well as wetland, there are two additional arguments that I want to present, the first one is about three weeks ago or so the property just across my house and I happened to be in the window and looking at an incident where an 18 wheeler trucker was coming on Toleman Road and stopped at the tunnel realizing that he didn't have the clearance to go through so the driver backed up and then turned putting his rear end in the property of the party concerned and the trucker got stuck. Now it was a clear day, sunny, there was no snow on the ground, the soil was apparently or seemingly was dry, yet the trucker got stuck for one hour he tried to get out and he was

helped by another trucker who had a lesser truck, so it took them about one hour to pull out that truck from the property of the party. So the first argument that I am presenting the fact that this land is really The second argument is one in which many of us in this community comes out from New York City, we lived in a very crowded area in New York City and one of the reasons why we moved in this area is because of space, we want space for our children. We're concerned of the fact that the board change the zoning law, it will allow a precedence where the houses can be built, houses can be built on smaller acreage and congestion in an area which is already being under construction. We're concerned about the space. Originally, the board acted on the laws and the requirement of this minimum acreage for one acre for building and in essence, I'm urging the board to continue in the wise path that they originally had set themselves up. Thank you.

MR. TORLEY: Anybody else?

MS. TUTHILL: I'm Diane Tuthill 205 Tolman, I live next to them, I want to applaud what he said about the truck, that's the only place when the truckers realize they cannot make it through the tunnel, they turn around, they use my driveway, they back straight out onto Tolman, that's the property they realize that they There was a rollover this winter in can't make it. front of his house, a kid right out of high school came around that dangerous curve, hit his brakes went across the road, rolled over into his ditch, that's a very dangerous frontage right there. I want to reiterate about the cars that beep, nine out of ten cars beep to go through the tunnel, they'll hear honking all day and night, 24 hours a day, they'll beep. Basically, I want to ask you respectively not to down-zone our property because like Serge said, we bought one acre and better in that area for a reason and like he said, it will set a precedence and respectfully, December 11, we had a hundred percent turnout, we understood we didn't have to appear again and that I hope that all those names on the petition will be on the record today. Thank you.

MR. TORLEY: Well, the board will certainly take note and remember the public input we had previously.

Anyone else wish to speak on this? If not, I'll close the public hearing and open it back up to the board members.

MR. KRIEGER: What this basically says where there's a non-conforming lot already existed it can be used for anything that's allowed in the zone, provided that it meets the other requirements area and setback requirements as specified for that area or anymore restrictive residential area. Actually, it's a more restrictive residential area having the same or less plot width, so if there's a more restrictive requirement in the Town for a different zone that would allow, that would be determined by the same plot width. Those are the requirements that would apply.

MR. TORLEY: And the criteria for granting an area variance, aside from the pre-existing zoning or pre-existing, non-conforming lots would be still the balancing act of self-created hardships, public safety.

MR. KRIEGER: Variances are always a self-created hardship, what, in essence, however, this applicant is now arguing a different argument, what they are now arguing because this lot has standing as a pre-existing, non-conforming use, no variance is necessary, it's in essence an interpretation, it's up to this board to determine whether in fact that is the case. If it does have pre-existing, non-conforming status and it meets that other test, it's a two prong test, it could meet all the other requirements then they don't have to ask for a variance because they have, as of right, they have the right to build on that lot. If it doesn't meet those tests, then they do have to and yes, an area variance would be a balancing test.

MR. TORLEY: I was curious also as to whether the amendments added in '86 regarding non-conforming lots, residential lots which are basically the Beaver Dam amendments, whether they are permanent here, it appears that they are not, since that lot is of larger width than is described in that series of amendments.

MR. BABCOCK: Larry, that's an additional section for the non-conforming lots in Ducktown, anywhere in the Town, but what it does it goes on to say that in order to qualify to downsize the lot area of your lot, you must have both water, central water and central sewer which there is none on Toleman Road, so you lose right there, so you don't get qualified to downsize the lot, that non-conforming lot can downsize to 5,000 square feet, also downsize the side yards and rear yards based on the size of the lot if it has water and sewer.

MR. KRIEGER: Yes, this amendment is tied into the one that I just talked to the board about, yes, it is a requirement that the lot be served by central sewer and central water as the building inspector stated is correct, there are seven other criteria here.

MR. TORLEY: Now, is this then to be taken as the Town Board's indication that if you have a pre-existing, non-conforming lot that's smaller in size than the lot requirements for that zone, we're going to admit it as a reasonable building lot only if it has water and sewer or is it merely restricting it to setting an absolute minimum size regardless that we're going to insist on having.

MR. KRIEGER: No, I think that it is the former and I think the answer to that or the reason for that is contained in Subdivision F which states as follows, it's the finding of the Town Board that the development of non-conforming lots not meeting the above criteria will meet the proper proper and orderly development and general welfare of the community. So it's clear that what the Town Board intended in enacting that law is that a pre-existing, non-conforming residential lot in order to be used had to meet those 8 criteria.

MR. TORLEY: Because I assume because they are concerned about the impact on neighborhoods, if you had private wells and septics on substandard sized lots.

MR. KRIEGER: Well, there's a statement of intent here which I had previously read out to the Town Board.

MR. TORLEY: Zoning Board, you mean?

MR. KRIEGER: Yes, in the record.

MR. KRIEGER: I take no position as to whether or not this meets a constitutional test, except to remind the board that there's a presumption of constitutionality in enacting a statute unless it's been declared unconstitutional by somebody else.

MR. TORLEY: Then in the interest of time, I'd like to move on to another point leaving aside any claims of pre-existing, non-conforming use, for the moment, we set that aside, we're not saying one way or the other, what's your argument for asking for an area variance on this lot?

MR. BLOOM: Setting that aside, Mr. Torley, simply based it on the fact that we have a lot that's been in the same ownership since 1986, taxes have been paid on that lot ever since, they continue to be paid. is basically useless for any purpose whatsoever under the circumstances and we have indicated in our prior presentation and in the photographs before this board that comments from the public to the contrary, that the sight distance from this property to the tunnel is more And I was rather struck by some of the than ample. comments to the effect that it seems that the objections seem to rise from the fact that the neighbors seem to feel that the owner of this property who's paid taxes on it for over 16 years seems to owe taxes to the town, so that the public can have the convenience of having oversized trucks turn around on the property and take advantage of the property. mean, I think we also have to look at this from the perspective of the property owner, he's paid taxes for 16 years on the lot and I also would also suggest after listening to the definition of a non-conforming use in the statute, I believe that counsel would agree with me that where there's an ambiguity in the definition of a statute where we're talking about taking property from someone that the ambiguity should be resolved in favor of the property owner and in this particular case, I respectfully suggest or submit to this board that an interpretation that would be reasonable in these circumstances would be that this non-conforming lot should be permitted to be used as a residential lot as long as it conforms in all other respects to the code

which this does. Now, the definition as being circumscribed by the Town Board by saying and if it has water and sewer, but I submit there is a question of constitutionality here, if you have a pre-existing, non-conforming use, it doesn't say it's pre-existing, non-conforming, you can use it as a residential lot, if it has public sewer and water, that isn't what the definition of non-conforming use is. It is the definition perhaps of what this code says, but I believe that this code is also subject to the reasonable interpretation which is this lot conforms in all other respects, except it doesn't have town water and town sewer, that to me is a classic definition of non-conforming lot, respectfully, otherwise what are we doing, we're saying to the public we're saying well, if you're unfortunate enough to have been stuck with this pre-existing, non-conforming use, that's your lot in life, you just pay taxes on it in perpetuity, a hundred years, your children, your grandchildren will pay taxes on it, that to me is an illogical interpretation.

MR. TORLEY: Has the applicant had at any time approached the Town assessor saying my lot since 1992 which is the last time the request was turned down to approach the town assessor and say look, the zoning board said I couldn't build on my lot, I want the assessment reduced.

MR. BLOOM: I have no indication that he ever did that but the indication I have is my client wishes to purchase it, build a house on it and pay taxes to the Town of New Windsor.

MR. TORLEY: Gentlemen, any other questions?

MR. MC DONALD: That's a lot on my mind.

MR. KANE: Honestly, if it's okay with you, I'd like to make a motion to, I know it's unfortunately to table it to the next meeting because we have been presented with a lot with the non-conforming that needs to be looked into and I'd rather not make a very hasty decision.

MR. MC DONALD: I have a lot of questions that haven't been answered, some of them have and in my opinion, I

agree with some of the stuff and some of it it's not clear and I couldn't honestly vote.

MR. TORLEY: Are there questions you wish to ask now or just mull over, take it under advisement?

MR. KANE: Move that we table the current application until the next meeting.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE AYE MR. MC DONALD AYE MR. TORLEY AYE

MR. TORLEY: We're not going to have a public hearing, you're more than welcome to come back and listen again and these are all open meetings, we try do everything in the sunshine, but as you heard, the board members want to think about it, we don't want to do anything hasty.

MR. BLOOM: Thank you very much, Mr. Torley. May I present to the board just for convenience sake I made photocopies of the decision of the prior ZBA, 1992.

MR. TORLEY: Sure, that would be helpful and I also have a copy of a letter I received from the railway indicating their intent to continue to use it.

MR. REIS: Motion to adjourn.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE AYE MR. MC DONALD AYE MR. REIS AYE

MR. TORLEY

AVE

Respectfully Submitted By:

Frances Roth Stenographer

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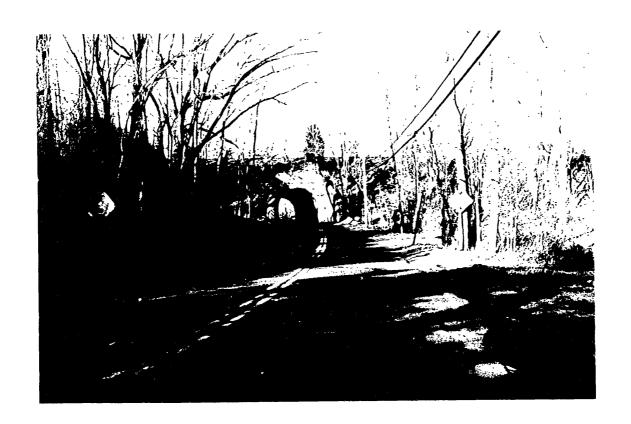


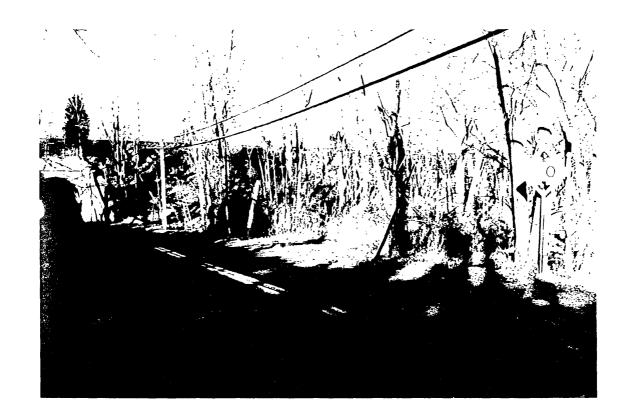










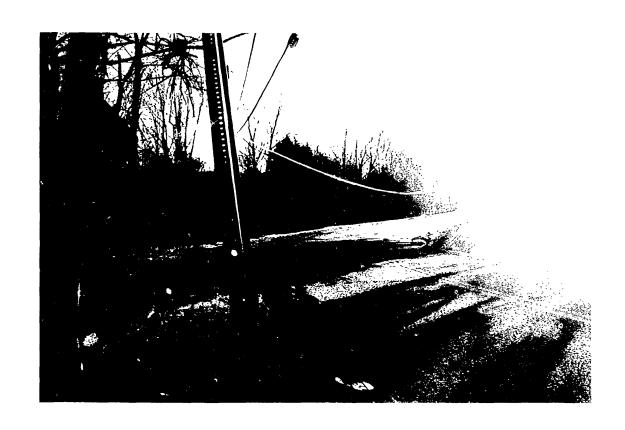






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HZ.

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4/9/01	Public Hearing: Gang	gials/Lyon #01-60A
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	Wame;	Address.
	Sorge SAINT-PRIX	215 Toleman Road
	Weder Saint-Prix	4 21 1,
	Diane Tuttle	205 '' ''
	WICCIAM A. Sharp	197 "
	MJ Sharp	197 " "
	Richard DE Key	4 DYER Come Comwell
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12/11/00 Public Hearing: Lyons/Garguelo # 00-60 ober Mame: Raver Address: 391 Benthe Rul Tach KENNETHA KABBELT 191 Taeman ROAD Distriction M. Rabsatt 191 Toleman 185 Taleman a not Joseph Bonomi object Richard Derevensky 184 Tolement ONE VWILLIAM A. Sharp 197 Toleman ROAD MJMorse-Sharp 197 Toleman Rd WYN Y Serge SAINT-PRIX 215 Toleman Rd objuty Nader Saint-Prix 215 Holeman Rd. 818 A Pione Tuttle 206 Toleman Rd Object VISSEPHE RAKOWIECKI 151 Station Rel * Branging Cinic Brown Object: Safety.



Norfolk Southern Corporation
Real Estate Department
2001 Market Street, 29th Floor
Philadelphia, PA 19103-7044

Malcolm G. Roop Manager Real Estate

Phone: (215) 209-4208
Fax: (215) 209-4217
Email: mgroop@nscorp.com

February 22, 2001
File: New Windsor, NY.
Timothy Lyons

Mr. Daniel J. Bloom, Esq. Bloom & Bloom, P.C. Attorneys And Counselors At Law 530 Blooming Grove Turnpike P. O. Box 4323 New Windsor, NY. 12553

Dear Mr. Bloom:

This is in reference to your letter dated January 26, 2001 regarding your clients, Mr. Timothy Lyons, application for an Area Variance on premises contiguous to the railroad right of way owned by Pennsylvania Lines LLC at or near Toleman Road in New Windsor, New York.

While your letter was addressed to the previous owner of this right of way, Consolidated Rail Corporation, it was forwarded to us for a response. This right of way is currently leased to Norfolk Southern Railway Company for its operating purposes. At this time we have no knowledge of any plans to discontinue the use of these tracks. There should be no relevance to this matter with respect to your clients application.

Should you have further questions feel free to contact us at the above phone number or address.

Sincerely,

Moleolm D. Roop

Bloom & Bloom, P.C.

ATTORNEYS AND COUNSELORS AT LAW

DANIEL J. BLOOM PETER E. BLOOM

January 26, 2001

530 BLOOMING GROVE TURNPIKE

(AT THE PROFESSIONAL CIRCLE)
P.O. BOX 4323

NEW WINDSOR, NEW YORK 12553

TELEPHONE (845) 561-6920

FAX: 845-561-0978

CON RAIL 6 Penn Center Plaza Philadelphia, Pa. 19103

Certified Mail-Return Receipt Requested

AND FIRST CLASS MAIL

Attention: Real Estate-Deeds Dept.

RE: Application of Timothy Lyons and Michael Garguilo

for Area Variance Our File No. R-9199

Dear Sirs:

As attorney for Timothy Lyons, applicant for an Area Variance on premises contiguous to your right of way in the Town of New Windsor that crosses Toleman Road (see copy of survey of the subject premises enclosed for your reference), I write to request that you kindly advise as to whether or not your company has any immediate plans to discontinue the use of the subject track. Such information would have relevance with respect to my client's aforesaid application to the Zoning Board of Appeals in the Town of New Windsor.

Thank you for your anticipated prompt reply.

Very truly yours,

DANIEL J. BLOOM djb:kp

cc: Mr. Timothy Lyons









H.

OFFICE OF THE BUILDING INSPECTOR TOWN OF NEW WINDSOR ORANGE COUNTY, NEW YORK

Nov. 13, 2000 # 00-60

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT (914) 563-4630 TO MAKE AN APPOINTMENT WITH THE ZONING BOARD OF APPEALS.

DATE: 10/31/00

APPLICANT: Timothy Lyons A.P.S. Corp.

25 South Street

Washingtonville, NY 10992

Ovilli: Mike Copy

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATE: 10/26/00

FOR : Single Family Dwelling

LOCATED AT: Vacant Land

ZONE: \R-3

DESCRIPTION OF EXISTING SITE: 56-1-24

IS DISAPPROVED ON THE FOLLOWING GROUNDS: Bulk Tables R-3 Zone

1. Single Family Dwellings without central water and without central sewer requires 43,560sqft. Applicant's lot is 31,585sqft, a variance of 11,975sqft is required.

Hous Inchor

VARIANCE PERMITTED REQUEST: AVAILABLE: ZONE: R-3 USE: MIN. LOT AREA: 43,560 31,585 11,975 MIN LOT WIDTH: REQ=D.. FRONT YD: REQ=D. SIDE YD: REQD. TOTAL SIDE YD: REQ=D REAR YD: REQ=D FRONTAGE: MAX. BLDG. HT.: FLOOR AREA RATIO: MIN. LIVABLE AREA: **DEV. COVERAGE:**

cc: Z.B.A., APPLICANT, FILE, W/ ATTACHED MAP

PLEASE ALLOW FIVE TO TEN DAYS TO PROCESS IMPORTANT YOU MUST CALL FOR ALL REQUIRED INSPECTIONS OF CONSTRUCTION

RECEIVED

FOR OFFICE USE ONLY:

Building Permit #:_

Other inspections will be made in most cases but those listed below must be made or Certificate of Occupancy may be will first an unscheduled inspection for one of those listed below. Unless an inspection report is left on the job indicating approval of one of these inspections it has not been approved and it is improper to continue beyond that point in the work. Any disapproved work must be reinspected after correction.

BUILDING 19-PARTMENT

- 1. When excavating is complete and footing forms are in place (before pourise)
- 2. Foundation inspection. Check here for waterproofing and footing drains.
- 3. Inspect gravel base under concrete floors and underslab plumbing.
- 4. When framing, rough plumbing, rough electric and before being covered.
- 5. Insulation.
- 6. Final inspection for Certificate of Occupancy. Have on hand electrical inspection data and final certified plot plan. Building is to be completed at this time. Well water test required and engineer's certification letter for septic system required.
- 7. Driveway inspection must meet approval of Town Highway Superintendent. A driveway bond may be required.
- 8. \$50.00 charge for any site that calls for the inspection twice.
- 9. Call 24 hours in advance, with permit number, to schedule inspection.
- 10. There will be no inspections unless yellow permit card is posted.
- 11. Sewer permits must be obtained along with building permits for new houses.
- 12. Septic permit must be submitted with engineer's drawing and perc test.
- 13. Road opening permits must be obtained from Town Clerk's office.
- 14. All building permits will need a Certificate of Occupancy or a Certificate of Compliance and here is no fee for this.

<u>AFFIDAVIT OF OWNERSHIP AND/OR CONTRACTOR'S COMP & LIABILITY INSURANCE CERTIFICATE IS REQUIRED BEFORE PERMIT WILL BE ISSUED</u>

PLEASE PRINT CLEARLY - FILL OUT ALL INFORMATION WHICH APPLIES TO YOU

Owner of Premises MICHAEL GARGUILO
Address 7705-6AUC Phone 718-921-088
Mailing Address BROOKLYN, N.Y. 1/209
Name of Architect 84 Lumber
Address - E19H4 - four , PA 15384 Phone 1800-359-8484
Name of Contractor ALL PHASE STRUCTURE CORP.
Address 25 SOUTH ST. WASHINGTONVILLE, NY 10992 Phone 497-3856
State whether applicant is owner, lessee, agent, architect, engineer or builder
If applicant is a corporation, signature of duly authorized officer. TIMOTHY LYONS (PRESIDENT)
(Name and title of corporate officer)

1.	Cn what street is property located? On theside ofTOLMEN RD.
	and imile feet from the intersection of PT 207
2.	Zone or use district in which premises are situated Is property a flood zone? YN X
3.	Tax Map Description: Section 88 56 Block 1 Lot 24
4.	State existing use and occupancy of premises and intended use and occupancy of proposed construction.
٠	a. Existing use and occupancy NONE b. Intended use and occupancy 1 FAMILY HOME
5.	Nature of work (check if applicable) New Bldg ☑ Addition ☐ Alteration ☐ Repair ☐ Removal ☐ Demolition ☐ Other ☐
6.	Is this a corner lot?NO
7.	Dimensions of entire new construction. Front $30'$ Rear $30'$ Depth $32'$ Height $27'$ No. of stories $1'/2$
8.	If dwelling, number of dwelling units:Number of dwelling units on each floor
	Number of bedrooms 2 Baths / /2 Toilets 2 Heating Plant: Gas Cilxx
	Electric/Hot Air Hot Water OIL If Garage, number of cars
9	. If business, commercial or mixed occupancy, specify nature and extent of each type of use
1	0. Estimated cost 75,000 Fee #50.00

3,6,00 date

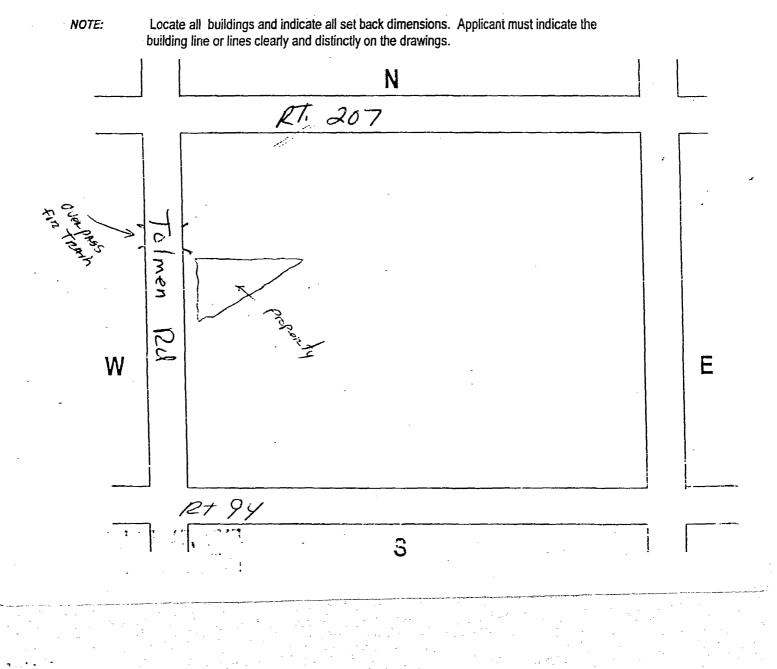
APPLICATION FOR BUILDING PERMIT TOWN OF NEW WINDSOR, ORANGE COUNTY, NEW YORK Pursuant to New York State Building Code and Town Ordinances

Building Inspector: Michael L. Babcock Asst. Inspectors Frank Lisi & Louis Krychear New Windsor Town Hall 555 Union Avenue New Windsor, New York 12553 (914) 563-4618 (914) 563-4693 FAX	Bldg Insp Examined Fire Insp Examined Approved Disapproved Permit No		
INSTRUCTIONS			

- A. This application must be completely filled in by typewriter or in ink and submitted in duplicate to the Building Inspector.
- B. Plot plan showing location of lot and buildings on premises, relationship to adjoining premises or public streets or areas, and giving a detailed description of layout of property must be drawn on the diagram, which is part of this application.
- C. This application must be accompanied by two complete sets of plans showing proposed construction and two complete sets of specifications. Plans and specifications shall describe the nature of the work to be performed, the materials and equipment to be used and Installed and details of structural, mechanical and plumbing installations.
- D. The work covered by this application may not be commenced before the issuance of a Building Permit.
- E. Upon approval of this application, the Building Inspector will issue a Building Permit to the applicant together with approved set of plans and specifications. Such permit and approved plans and specifications shall be kept on the premises, available for inspection throughout the progress of the work.
- F. No building shall be occupied or used in whole or in part for any purpose whatever until a Certificate of Occupancy shall have been granted by the Building Inspector.

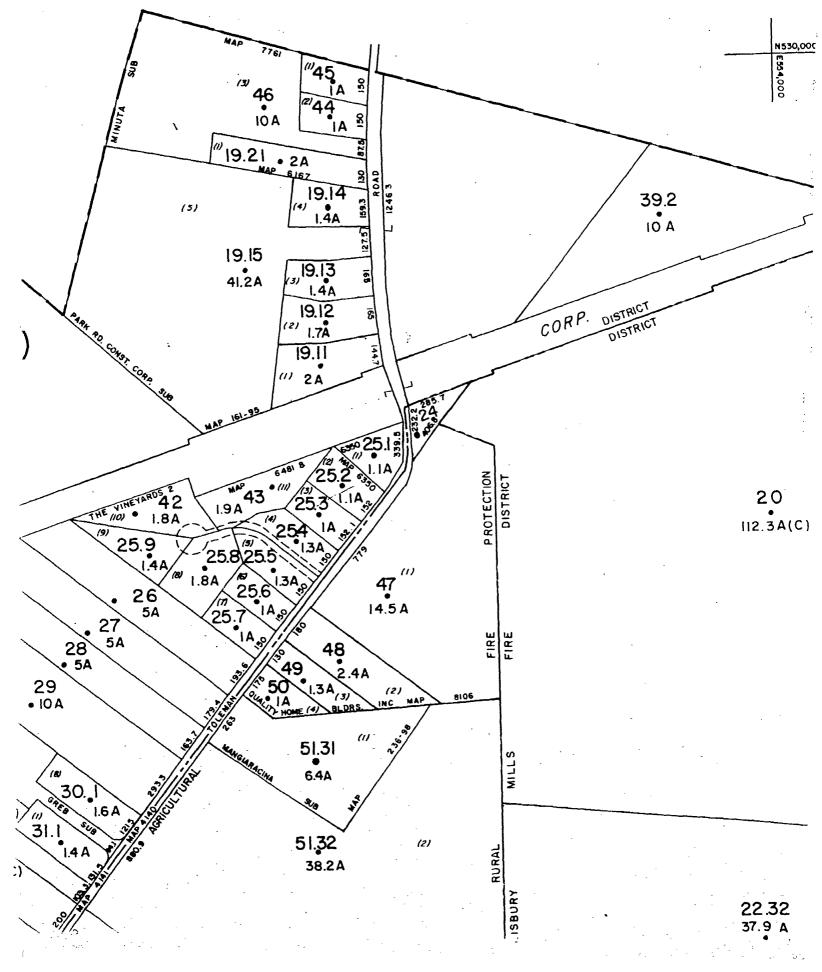
APPLICATION IS HEREBY MADE to the Building Inspector for the issuance of a Building Permit pursuant to the New York Building Construction Code Ordinances of the Town of New Windsor for the construction of buildings, additions, or alterations, or for removal or demolition or use of property as herein described. The applicant agrees to comply with all applicable laws, ordinances, regulations and certifies that he is the owner or agent of all that certain lot, piece or parcel of land and/or building described in this application and if not the owner, that he has been duly and properly authorized to make this application and to assume responsibility for the owner in connection with this application.

properly additionated to highle this application and to assume	e responsibility for the carit	ci ili ccimecach mui una application.	
Turnell & Pres. A.	P.S. Comp	25 south st washing	TONVILLE NY-
(Signature of Applicant)	in W. Shows	(Address of Applicant)	10992 BIKYN. N.Y.
(Owner's Signature)	PLOT PLAN	(Cwner's Address)	11209



SECTION

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Pls. publish immediately. Send bill to: Tim Lyons.
P.D. Box 16

PUBLIC NOTICE OF HEARING Salisbury Mills, My 12577

ZONING BOARD OF APPEALS.

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following Proposition:

TOWN OF NEW WINDSOR

Appeal No. 60A
Request of Gargiulo, Michael Lyons, Timothy
for a VARIANCE of the Zoning Local Law to Permit:
construction of single-family dwelling of insufficient lot
CI KACA
being a VARIANCE of Section 48-12- Table of Bulb Regs - Col. C
for property situated as follows:
Els Toleman Road adjacent to overpass (railroad)
known and designated as tax map Section <u>56</u> , Blk. / Lot <u>24</u> .
PUBLIC HEARING will take place on the 9th day of 4rd , 19 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York beginning at 7:30 o'clock P.M.

Chairman By: Patricia A. Corsetti, Secy.



Town of New Windsor

555 Union Avenue New Windsor, New York 12553 Telephone: (845) 563-4631 Fax: (845) 563-4693

Assessors Office

November 15, 2000

(12)

Timothy Lyons Telephone Number 845-497-3856

Re: 56-1-24 (Mr. & Mrs. Garguilo)

Dear Mr. Lyons,

According to our records, the attached list of property owners are within five hundred (500) feet of the above referenced property.

The charge for this service is \$35.00, minus your deposit of \$25.00.

Please remit the balance of \$10.00 to the Town's Clerk Office.

Sincerely.

Leslie Cook Sole Assessor

LC/jfj Attachments

CC: Pat Corsetti, ZBA

56-1-19.11 JP & JP Associates Inc. P.O. Box 7420 Newburgh, NY 12550

56-1-47 Derevensky, Richard & Laura P.O. Box 309 Washingtonville, NY 10992

56-1-19.12 Brian & Helen Flint 231 Toleman Rd. Washingtonville, NY 10992 56-1-43
Flanagan Kevin J. & Mary Lou
8 Vineyard Lane
Washingtonville, NY 10992

56-1-19.13
Irizarry Anselmo & Annette Simmons
237 Toleman Rd.
Washingtonville, NY 10992

56-1-20 Joseph Rakowiecki 151 Station Rd. Salisbury Mills, NY 12579

56-1-39.2 Safder Akhtar H., Baby Varghese, & Abraham Thomas 564 Quail Valley Princeton, WV 24740

56-1-25.1 Saint-Prix Nadir Aldir & Serge 215 Toleman Rd. Washingtonville, NY 10992

56-1-25.2 Robert & Diane Tuttle 205 Toleman Rd. Washingtonville, NY 10992

56-1-25.3 William Sharp & Mary Jane Morse 197 Toleman Rd. Washingtonville, NY 10992

56-1-25.4
Bruce Thomas & Maria Custardoy Thomas
191 Toleman Rd.
Washingtonville, NY 10992

56-4-39.1 Consolidated Rail Corp 6 Penn Center Plaza Philadelphia, PA 19103

TOWN OF NEW WINDSOR ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

	# 00-60 A.
	Date: March 2001
L	Applicant Information:
	(a) Michael Garguilo, 7705 6th Avenue, Brooklyn, New York 11209 (718-921-0881) (Name, address and phone # of Applicant)
	(b) Timothy Lyons, Post Office Box 16, Salisbury Mills, New York 12577 (845-497-3856) (Name, address and phone # of Purchaser or Lessee)
	(c) Daniel J. Bloom, Esq., P O Box 4323, 530 Blooming Grove Trnpke, New Windsor, NY 12553 (845-561-6920) (Name, address and phone # of Attorney)
	(d) All Phase Structure Corp., 25 South Street, Washingtonville, NY 10992 (845-497-3856) (Name, address and phone # of Contractor/Engineer/Architect)
II.	Application type:
	Use Variance Sign Variance
	(X) Area Variance () Interpretation
ш.	Property Information:
	(a) <u>R-3</u> Toleman Road, Washingtonville, NY 10992 <u>53-1-24</u> <u>31,585 sq. ft.(. 73 +/- acres)</u>
	(SBL) (Lot Size)
	(b) What other zones lie within 500 ft.? NONE
	(c) Is a pending sale or lease subject to ZBA approval of this application? YES
	(d) When was property purchased by present owner? <u>August 29, 1986.</u>

IV. Use Variance. NOT APPLICABLE (a) Use Variance requested from New Windsor Zoning Local Law, Section, Table of Reqs., Col, to allow: (Describe proposal) (b) The legal standard for a "use" variance is unnecessary hardship. Describe why you fe unnecessary hardship will result unless the use variance is granted. Also set forth any efforst you made to alleviate the hardship other than this application.	when? March 1992. Ider to Remedy Violation been issued against the property owned by the Zoning Inspector? NO Iny outside storage at the property now or is any proposed? NO In detail:		(e) Has property been subdivided previously? <u>NO</u>	
(g) Has an Order to Remedy Violation been issued against the property owned by the Building/Zoning Inspector? NO (h) Is there any outside storage at the property now or is any proposed? NO Describe in detail: V. Use Variance. NOT APPLICABLE (a) Use Variance requested from New Windsor Zoning Local Law, Section, Table of Reqs., Col, o allow: (Describe proposal) (b) The legal standard for a "use" variance is unnecessary hardship. Describe why you fee innecessary hardship will result unless the use variance is granted. Also set forth any efforst you nade to alleviate the hardship other than this application.	NOT APPLICABLE NOT APPLICABLE nce requested from New Windsor Zoning Local Law, , Table of		(f) Has property been subject of variance previously? YES	
Building/Zoning Inspector? (h) Is there any outside storage at the property now or is any proposed? Describe in detail: V. Use Variance. NOT APPLICABLE (a) Use Variance requested from New Windsor Zoning Local Law, section Table of Reqs., Col. Describe proposal) (b) The legal standard for a "use" variance is unnecessary hardship. Describe why you fennecessary hardship will result unless the use variance is granted. Also set forth any efforst you nade to alleviate the hardship other than this application.	NOT APPLICABLE NOT APPLICABLE nee requested from New Windsor Zoning Local Law, , Table of		If so, when? March 1992.	
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application.

difficulty was self-created.

	(d) The property in question is located in or within 500 ft. of a County Agricultural District: Yes No				
If the answer is Yes, an agricultural data statement must be submitted along with the application as well as the names of all property owners within the Agricultural District referred to. You may requeste this list from the Assessor's Office.					
•	(a) Area variance requested from New Windsor Zoning Local Law,				
	Proposed or Available	Variance Request			
Requirements					
Min.Lot Area 43,560 Sq. ft.	31,585 sq. ft.	11,975 sq. ft			
Min Lot Width					
Reqd. Front Yd.					
Reqd. Side Yd.					
Reqd. Rear Yd					
Reqd. Street Frontage*					
Max. Bldg. Hgt.		_			
Min. Floor Area*					
Dev. Coverage*					
Dev. Coverage* Floor Area Ratio**					
Parking Area					
*Residential Districts Only					
** No-residential districts only	1				

⁽b) In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance.; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged

Describe why you believe the ZBA should grant your application for an area variance:

V. (b) CONTINUED:

Applicant intends to construct a new residence on the parcel 30 feet x 32 feet which will comply with all set back restrictions contained in the New Windsor Zoning Code. Rather than being a detriment to the neighborhood, it is submitted that construction of a one family residence with the aforesaid dimensions will enhance the aesthetics of the surrounding properties.

The property in questions has remained vacant since 1986 with the owner paying taxes throughout that period of time without deriving any other benefit from the ownership of the property. The only alternative available to the applicant would be to purchase additional property from an adjacent land owner. In that regard, the applicant (Timothy Lyons) hereby states under oath that he approached the contiguous land owner immediately following this Board's denial of his original application and requested to purchase such additional lands. However, the land owner absolutely refused to negotiate the selling price or agree to any conveyance of property to the applicant. It is further submitted to this Board that any residence constructed on the subject parcel will not be visible (even in winter) to the surrounding home owners.

While there is a rail road trestle near the property, the "line of sight" is extensive and clear and presents no hazardous condition to any potential users of any residence to be constructed on the premises.

The property owner did not create the condition giving rise to the need for this variance. On the contrary, the property owner has simply paid taxes on the property since 1986 without being able to utilize it for any beneficial purpose.

VI. Sign Variance:		OT APPLICABLE		
	requested from New	Windsor Zoning Local I Re	-	
Section _	Requirements	Proposed or Available	Variance <u>Request</u>	
Sign 1				
Sign 2			-	
Sign 3				
Sign 4				
building, and free-sta	anding signs?	et of all signs on premise	s including signs on windows	, race or
VII. Interpretation.	N	OT APPLICABLE	¥	
Section _ Col	, T a b		l Law, Regs.,	
(b) Describe	in detail the proposa	l before the Board:		

VIII. Additional Comments:

Attachments required:

IX.

(a) Describe any conditions or safeguards to ensure that the quality of the zone and neighboring zones is maintained or upgraded and that the intent and spirit of the New Windsor Zoning is fostered. (Trees, landscaping, curbs, lighting, paving fencing, screening, sign limitations, utilities, drainage.)

Applicant will meet all code requirements of the Town of New Windsor (except for area) and will construct a "built up" septic system in accordance with New York State and Town of New Windsor requirements including the distance between well and septic system. The house will be property set back from the nearest highway. Appropriate landscaping and screening with trees will be utilized to enhance the nesthetic effect on the neighborhood.

* /	Copy of referral from Bldg./Zoning Insp. or Planning Board
* /	Copy of tax map showing adjacent properties.
See attached	Copy of contract of sale, lease or franchise agreement.
* <u></u> *	Copy of deed and title policy
_•	Copy (ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.
Not Applicable	Copy (ies) of sign(s) with dimensions and location.
	Two (2) checks, one in the amount of \$ 50.00 and the second check in the amount of \$ 300.00, each payable to the TOWN OF NEW WINDSOR.
* <u>~</u>	Photographs of existing premises from several angles.

^{*}Previously submitted with Application filed on November 27, 2000 (File # 00-60).

X. Affidavit. SEE ATTACHED	Date: MANCH 12, 2001
STATE OF NEW YORK)	
and representations contained in this application are true to the best of his/her information and belief. The applic Zoning Board of Appeals may take action to rescind ampresented herein are materially changed.	ant further understands and agrees that the variance granted if the conditions or situation Y LYONS
Sworn to before me this 12th day of March, 2001	MATHY PASCALE MOTARY PUBLIC - STATE OF NEW YORK RESIDING IN ORANGE COUNTY #4902384 COMMISSION EXPIRES 3 0/
XL ZBA Action:	
(a) Public Hearing date:	

55.:

COUNTY OF ORANGE)

Timothy Lyons being duly sworn deposes and says:

- 1. I reside at P. O. Box 16, Salisbury Mills, New York 12577 and submit this Affidavit in support of my application for an Area Variance from The Town of New Windsor Zoning Board of Appeals.
- 2. I previously applied for the subject Area Variance from the New Windsor Zoning Board of Appeals on November 27, 2000 (Application #00-60). That application was denied by the Zoning Board of Appeals of the Town of New Windsor at a public hearing held on January 8, 2001.
- 3. Subsequent to that hearing, I approached the owner of premises adjacent to the subject premises and asked if he would sell a portion of his premises to me so that I would have sufficient acreage to construct my one family residence without the need of an area variance.
- 4. That neighbor summarily dismissed my offer and indicated that he would not sell any portion of his lands to me under any circumstances.
- 5. In addition, my attorney, Daniel J. Bloom, Esq., corresponded with Consolidated Rail Corp. (former owner of the railroad trestle and tracks) adjacent to the premises and was informed by Norfolk & Southern Corp. (new owners of the track and trestle) that they have no intentions in the immediate future to discontinue the use of the same.

6. Based upon the aforesaid new developments regarding my desire to construct a residence on the subject premises, I respectfully request permission from this Board to renew my application at this time.

Timothy Lyons

Sworn to before me this 1274 day of MArch 2001.

MATHY PASCALE MOTARY PUBLIC - STATE OF NEW YORK RESIDING IN ORANGE COUNTY #4902384

P. 3.0

COUNTY OF ORANGE:STATE OF I		OR X
In the Matter of the Application fo	or Variance of	AFFIDAVIT OF
Timothy Lyons.	· · · · · · · · · · · · · · · · · · ·	SERVICE BY MAIL
# <u>00-60A</u> .	· .	
•	· · · · · · · · · · · · · · · · · · ·	x
STATE OF NEW YORK)) SS.:		
COUNTY OF ORANGE)		
PATRICIA A. CORSETTI, be	eing duly swom, dep	oses and says:
That I am not a party to th 7 Franklin Avenue, New Windsor,		years of age and reside at
That on the 21 day of _ addressed envelopes containing to with the certified list provided by for a variance and I find that the then caused the envelopes to be of New Windsor.	he Public Hearing No the Assessor regardir addresses are identic	tice pertinent to this case ng the above application al to the list received. I
		,
	Patricia (J. Cosseth
·	Notary	Public
Sworn to before me this		
day of, 20_	•	·
National Dublic		
Notary Public		- "

NEW WINDSOR ZONING BOARD OF APPE		56-1-24
	X	5
In the Matter of the Application of	MEM	ORANDUM OF
	DECI	ISION DENYING
GARGIULO/LYONS	AREA	A VARIANCE
#00-60	÷	

WHEREAS, MICHAEL GARGIULO, owner, 7705 Sixth Avenue, Brooklyn, N. Y. 11209, and TIMOTHY LYONS, prospective purchaser, 25 South Street, Washingtonville, N. Y. 10992, have made application before the Zoning Board of Appeals for 11,975 sq. ft. lot area variance to permit construction of a single-family residence on Toleman Road in an R-3 zone; and

WHEREAS, a public hearing was held on the 11¹¹¹ day of December, 2000 and continued on the 8th day of January, 2001 before the Zoning Board of Appeals at the Town Hall. New Windsor, New York; and

WHEREAS, Applicant, Timothy Lyons, appeared with Daniel J. Bloom, Esq. for this Application; and

WHEREAS, there were 11 spectators appearing at the December 11, 2000 public hearing; none appearing for the continuation of the hearing on January 8 2001; and

WHEREAS, the majority of the spectators appearing on December 11, 2000 spoke in opposition to the Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the continued public hearing denying the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

- 1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.
 - 2. The evidence presented by the Applicant showed that:
- (a) The property is a residential property consisting of a one-family home located in a neighborhood containing two-family homes.
 - (b) The property meets all zoning requirements except that of lot area which is

- (b) The Applicant proposes signs to be placed on a freestanding, retail sales facility located in the middle of the shopping center.
- (c) The front façade sign, as proposed, is consistent with and appropriate to the size of the structures.
 - (d) The front façade sign will be sufficient to identify the existence of the business to motorists traveling on the adjacent, busy commercial highway.
 - (e) The front façade sign will measure 2 ft. by 25 ft.
 - (f) The second sign is placed on the rear of the building and is merely for identification by persons already in the shopping center.
- (g) The size of the sign applied for, 1 ft. by 16 ft. is the largest sign that the landlord of the property will permit, independent of any determination by the ZBA.

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

- 1. The variances will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
- 2. There is no other feasible method available to the Applicant which can produce the benefits sought.
- 3. The variances requested are substantial in relation to the Town regulations, but nevertheless are warranted.
- 4. The requested variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
- 5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.
- 6. The benefit to the Applicant, if the requested variances are granted, outweigh the detriment to the health, safety and welfare of the neighborhood or community.
- 7. The requested variances as previously stated are reasonable in view of the size of the building, its location, and its appearance in relation to other buildings in the neighborhood.
- 8. The interests of justice will be served by allowing the granting of the requested area variances.

substantially less of that allowed by the Zoning Local Law.

- (c) The property is situated so that access to the property is by a public road which must, however, pass through a narrow railroad tunnel.
 - (d) This property was the subject of a previous application made under file #91-24.
- (e) Circumstances of the lot and its location have not changed since the original Application.
 - (f) The instant Applicant has proposed building a house somewhat smaller than that of the earlier Applicant, but the earlier application was for a lot area variance and did not require any other area variances.
 - (g) Both the earlier Application and this Application, the use was and is a permitted one and the Applicant seeks only an area variance for the area of the lot.
 - (h) The railroad tunnel on the public road abutting this premises is so narrow that it will only allow the passage of one motor vehicle at a time and will not accommodate two motor vehicles passing in opposite directions at the same time.
 - (i) The lot is not served by either municipal sewer or water.
 - (j) The available lot area of the lot which is the subject of this Application is significantly less than that required by the Town Code.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

- 1. The requested variance will produce an undesirable change in the character of the neighborhood and will create a detriment to nearby properties.
 - Development of this personal property will increase the traffic on the adjacent roadway which cannot accommodate additional usage due to the presence of a railroad tunnel constricting the property.
 - 3. There is no other feasible method available to the Applicant which can produce the benefits sought.
- 4. The variance requested is substantial in relation to the Town regulations and is not warranted for the reasons listed above.
- 5. The requested variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

- 6. The difficulty the Applicant faces in conforming to the bulk regulations is self-created and should not be allowed.
 - 7. No information was presented to the Board about the present owner, Gargiulo, whether or not he was aware of the restrictions permitting building at the time he acquired the lot. The present Applicant, Lyons, apparently a contract vendee and is aware of the restrictions on the lot prohibiting building thereon.
 - 8. The benefit to the Applicant, if the requested variance is granted, does not outweigh the detriment to the health, safety and welfare of the neighborhood or community.
 - 9. The requested variance is not appropriate.
- 10. The interests of justice will not be served by allowing the granting of the requested area variance.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor DENY a request for a 11,975 sq. ft. lot area variance to allow construction of a single-family residence in an R-3 zone, as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: March 12, 2001.

Chairman

ALL PHASE STRUCTURE I, LLC.	1130
PH. 914-497-3856 25 SOUTH STREET, APT. 2F-R WASHINGTONVILLE, NY 10992	29-1/213
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MFRECT 27529 Washingtonville Washingtonville, Neg Feek 10992	
FOR Tolmen Red 76A #00-60 10	ar ar

ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

(zba Disk#5-030992.fd)

In the Matter of the Application of

MICHAEL A. GARGUILO

DECISION DENYING AREA VARIANCE

#91-24.

____X

WHEREAS, MICHAEL A. GARGUILO, residing at 3009 Weymouth Court, Apopka, Florida 32703, has made application before the Zoning Board of Appeals for an 11,975 sq. ft. lot area variance in order to conform to the regulations for a building lot located on the east side of Toleman Road in an R-3 zone; and

WHEREAS, a public hearing was held on the 27th day of January, 1992 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the applicant was represented at said public hearing by Robert Hansche of Hansche Realty, who was authorized by the applicant to represent him in connection with this application, and he spoke in support of the application; and

WHEREAS, the public hearing was attended by three (3) spectators who spoke in opposition to the application, to wit, Alix Arnoux and Shirley Arnoux, both residents of an adjacent parcel of land, who objected to the granting of the variance upon the grounds that the parcel in question is too small to be a building lot, that there is water present at the back of the lot which makes the same unsuitable for building, and that if fill were brought in to enable a built-up septic system to pass the required perc test, this would cause drainage from the lot to flow toward their property; and Maria Thomas, a resident of an adjacent parcel across the street, who objected to the granting of the variance upon the grounds that the property is marshy and unsuitable as a building lot; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following findings in this matter:

- 1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The
 Sentinel, also as required by law.
- 2. The evidence shows that applicant is seeking permission to vary the provisions of the bulk regulations pertaining to lot area in order to conform to the regulations for a building lot, having neither water or sewer, in an R-3 zone.
- 3. The evidence presented by the applicant substantiated the fact that a variance for less than the allowable lot area would be required in order to allow the subject lot to become a building lot, since the same is undersized, being deficient in

lot area, and which otherwise would conform to the bulk regulations in the R-3 zone.

- 4. The evidence presented by the applicant included a number of prior deeds for the property. However, it was unclear from the evidence presented by the applicant at what point in time the subject parcel was created out of a larger parcel or parcels.
- 5. In the absence of any clear proof that the subject parcel, pre-existed the adoption of zoning by the Town of New Windsor, it is the finding of this Board that the said parcel is not a pre-existing, non-conforming undersized lot of record. Consequently, this Board must view the subject parcel as one which was created as an undersized, non-buildable lot subsequent to the adoption of zoning in the Town of New Windsor.
- 6. The evidence presented by the applicant indicated that the applicants purchased the subject lot in 1986. The applicable zoning has remained unchanged for many years. Consequently, it is the finding of this Board that the subject lot was an undersized, non-buildable lot, at the time the applicant acquired the same in 1986, just as it is at the time of the instant application.
- 7. At a preliminary hearing on this application, the applicant's representative was requested to inquire of neighboring property owners if they would be willing to sell the applicant enough additional land in order to obviate the necessity for an area variance, and to return to the public hearing with this information. At the public hearing the applicant did not present such information since the applicant's representative, Mr. Hansche, apparently was directed by the applicant not to contact any adjacent property owners since he did not want to invest any additional money in the subject property.
- 8. It was not the intention of the Zoning Board of Appeals to require the applicant to enter into negotiations for the purchase of additional land from any adjacent property owner. The intention of the Zoning Board of Appeals in requesting that the applicant obtain this information was simply for the purpose of determining whether the applicant had an alternative remedy which would permit him to create a buildable lot without the necessity of obtaining an area variance. If an adjacent owner had been willing to sell the applicant sufficient additional land in order to expand the lot size to the minimum area required for a buildable lot, the cost of such land to the applicant might have been a factor in determining significant economic injury from the application of the bulk requirement to the applicant's lot.
- 9. Since the applicant declined to contact adjacent property owners regarding the possibility of purchasing additional land, it is the finding of this Board that the applicant has failed to present one relevant item of evidence, to wit, whether an alternative method of producing the result sought

by the applicant was available to the applicant, other than the variance procedure. The failure of the applicant to produce evidence requested by this Board is not viewed as determinative, but is considered by this Board as a relevant factor upon this area variance application.

- 10. The evidence presented by the applicant indicated that the value of the subject lot, without an area variance, was \$12,000, which was amended and reduced at the public hearing to \$9,000. The evidence presented by the applicant further indicated that the value of the subject lot, with an area variance, if the same were granted by this Board, was \$27,000, which was amended and reduced at the public hearing to \$25,000.
- 11. The evidence presented by the applicant at the public hearing indicated that the applicant purchased the subject lot in 1986 for the sum of \$22,900.
- 12. Since the lot area has remained the same from 1986 to the date of the public hearing, and since the applicable zoning has not changed during that same time frame, it appeared from the evidence presented by the applicant that the subject lot had fallen in value from \$22,900 in 1986 to its present value, without a variance, of \$9,000. Upon questioning Mr. Hansche, the evidence presented on behalf of the applicant indicated that the diminution in value from 1986 to the present was the result solely of market conditions, it was not a result of the applicable zoning, which remained unchanged during this time period.
- 13. It is the finding of this Board that the applicant has failed to show significant economic injury from the application of the Zoning Local Law to his land. When the cost of the parcel in 1986 is compared with its value as zoned at the present time, it appears that the applicant simply overpaid for subject lot. It does not appear that the diminution in value was the result of the applicable zoning, which remained unchanged during this entire time period. The evidence presented by the applicant's agent, Mr. Hansche, is unequivocal, the diminution in value from 1986 to the present was solely as a result of the market conditions. Given this evidence presented by the applicant, this Board cannot find that the applicant has made a showing of significant economic injury from the application of the Zoning Local Law to his land.
- 14. In addition, it is the finding of this Board that the hardship the applicant now finds himself facing is self-created. The applicant bought a substandard, non-buildable lot in 1986. The zoning was the same in 1986 as it is at the present time. The lot remains substandard and non-buildable at the present time. The applicant now seeks a variance from this Board in order to build upon this substandard, non-buildable lot. However, the applicant has failed to investigate the possibility of acquiring additional land in order to enlarge the lot to the minimum buildable lot size and the applicant has failed to show significant economic injury from the application of the Zoning Local Law to his land. Although self-created hardship is not

determinitive on the applicant's request for an area variance, it is a factor which this Board has considered.

- 15. It is the finding of this Board that if the applicant has suffered any economic injury with respect to the subject lot, it exists by virtue of the applicant's own decision to purchase this lot for a substantial sum of money in 1986 without investigating whether the same was of sufficient lot area to be buildable, and by the subsequent adverse changes in real estate market conditions. Since the applicable minimum lot area has remained unchanged in the Zoning Local Law since before the time the applicant purchased this lot, it is the finding of this Board that no significant economic injury resulted from the application of the Zoning Local Law to the applicant's land.
- 16. The requested variance is substantial in relation to the bulk regulations.
- 17. The requested variance will result in substantial detriment to adjoining properties and will change the character of the neighborhood.
- 18. The requested variance will produce an effect on population density and governmental facilities.
- 19. Their may be another feasible method available to the applicant which can produce the necessary results other than the variance procedure but the applicant has failed to investigate this alternative remedy in order to determine if, in fact, it is available to him.
- 20. The interests of justice are served by denying the requested variance.
- 21. The applicant has failed to make a showing of practical difficulty entitling him to the granting of the requested area variance.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor deny a 11,975 sq. ft. lot area variance in order to conform to the regulations for a building lot, in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and applicant.

Dated: March 9, 1992.

Skichard Ferwick

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TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE NEW WINDSOR, NEW YORK 12553

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PUBLIC HEARINGS:

GARGIULO/LYONS

MR. NUGENT: Public hearing held on 12/11/00 reconvened for request for 11,975 s. f. lot area variance to construct single-family residence on Toleman Road in an R-3 zone.

Daniel Bloom, Esq. and Mr. Tim Lyons appeared before the board for this proposal.

MR. BLOOM: Good evening, gentlemen, my name is Dan Bloom and I have been retained by Mr. Lyons to appear with him this evening. I realize that he was here on the original application and made a presentation. had the opportunity to review the minutes of that meeting and after reviewing those minutes with this board's permission, I'd like to address some issues that I perceive were raised at the time, if that's acceptable at this time. I realize that the public hearing was closed, but I believe that the meeting was extended, you extended the courtesy to my client because I unfortunately was under the effects of the flu at the time. What I would like to do before making any of the comments is with your permission, Mr. Chairman, is submit to the board for its consideration in conjunction with my remarks the plans of the proposed house, should the variance be granted here, and the reason why I would like to take the opportunity to do that is that there were questions raised before at the prior meeting relative to why this board should consider granting a variance when there had been an application before this board back in 1991 and my client at the time I believe in response to those questions indicated that he obviously had no personal knowledge of the reasons but he suspected that perhaps definite plans had not been presented to the board on that occasion, so that he could make an intelligent decision with respect to the magnitude of the variance that was being requested. And to that end, my client has at my request secured proposed plans which indicate a proposed dwelling which is going to be actually smaller than originally proposed on the site plan that he submitted to the board with his original application

and I believe according to these plans, the actual structure will be 30 x 32 feet as opposed to 28 x 40. My client advises and based upon the information presented to the board so far, if this board were to consider granting the area variance requested, the proposed construction would require no other variances. It would meet all the setback requirements. original site plan presented to the board contains the septic design, it's a built-up system to accommodate the septic system on the property and the well, the proper distances would be between the two, and what I would like to now address is what I perceive to be a major concern on the original return date of this hearing and that was the question about the danger presented to the premises and the general public by reason of the train tunnel which abuts the premises in question. And I had my client go out and take photographs of the site which I would like to with the Chairman's permission present to the board at this time, these are the photographs my client delivered to me now, I'm not sure maybe the board, have you had those on the prior application?

MR. NUGENT: I believe we have this.

MR. TORLEY: Or similar photographs.

MR. BLOOM: If that's the case then I don't want to belabor the point, what I would like to do, however, with this board's permission--

MR. TORLEY: One of our colleagues was not able to be here at the last meeting, he was recovering so--

MR. BLOOM: With the board's permission, I'd like to present this evening more recent photographs specifically taken for the purpose of focusing in on the relationship between the tunnel and the property itself so that the board could get a better perspective of the distance between the tunnel, the sight line and the property itself and summarizing these photographs, I would simply say and I visited the site myself today to be sure that the photographs accurately depicted the way I believe they did depict and I believe and I submit respectfully to the board that they do, that in

actuality, if you stand on the premises in question and you look toward the tunnel, the line of sight is clearly through the tunnel out the other side of the tunnel even beyond where the cars on the other side will stop to wait their turn to pass through the one lane of travel. What I am really suggesting to the board is that though it may sound strange that a one lane tunnel would present a situation for a property such as this which would take it out of the zone of danger, I submit that that is the case in this case. As I approached that tunnel this afternoon, I realized and everybody does, that you've got to stop before you, well before you get to the tunnel, be sure you're clear before you pass through the tunnel, it's like almost having a built-in stop sign at the edge of the I also read the comments of the various members of the public at the last meeting and obviously, well-intentioned, but when I analyzed the comments and I placed them in the context of the tunnel and the property, I realize that most of the comments were directed at properties further to the north and south of the tunnel, where they are contiguous to bends in the road as opposed to this located property which is a very clear line of sight. And finally, I would like to submit to the board that my client doesn't intend to use this property to its maximum. originally constructed or designed a house which would be 40 feet by 28 feet which would meet the parameters of the zoning ordinance, again, he wouldn't have needed a variance for any of the setbacks but after hearing the comments from the general public and hearing the comments from the board the last time, he has voluntarily cut that back substantially to 30 by 32 feet to be well within the limits to minimize in accordance with the zoning law the request for the variance in question. And in conclusion, I would only respectfully submit to the board that if my client is not permitted to build this house on this particular piece of property, that the owner of the property is going to be relegated to paying taxes infinitum to the Town of New Windsor, whatever they may be on an unimproved lot without any benefits certainly to the property owner, without any benefit to the coffers of the Town of New Windsor and certainly without a benefit to the future owners of this particular residence which

obviously will contain a price tag that would be appropriate to what many people in this Town would like to buy but don't have the opportunity to buy. With that, I believe the presentation is complete and if you have any questions.

MR. NUGENT: Does your client intend to live in the house or build as a perspective?

MR. BLOOM: My client's building to it live in it but I realize he's not going to live forever and I realize this board has to address that issue but his intention is to reside in the house himself.

MR. TORLEY: This property was brought before the board in 1991 for essentially the same purposes and we rejected primarily because the lot was, the area variance was considered excessive at that time, as well there were no requests for any setbacks or any side yards or anything else because a house could be made to fit on the lot and still meet—the house is 11,000 square feet too short. At that time, Jim and I were on the board and it was felt that the lot did not meet the criteria, the lot hasn't gotten any bigger, the zoning laws haven't changed, why should we make a different decision now?

MR. BLOOM: Well, as I said before, Mr. Torley, I wasn't, of course we weren't here at the time, I don't know whether or not your board was afforded the opportunity to review a proposed site plan, a proposed built-up septic system, I don't know how the presentation was made. I don't know that your board considered the photographs that I just submitted which show a clear line of sight in terms of proposed danger. Now, if your remarks are limited strictly to the extent of the requested variance, in terms of the square feet, obviously, I have no answer for that because I can't change the square footage, I would only argue that I would respectfully submit that I think it imposes a tremendous burden upon land owners in this Town that they are obligated to pay taxes on property in perpetuity, so to speak, when it can never be utilized.

MR. TORLEY: But you're not obligated to buy it knowing

the lot size.

MR. BLOOM: Perhaps not, I don't know how Mr. Gargiulo acquired it, I don't know if he inherited it.

MR. TORLEY: You have an option to buy.

MR. BLOOM: My client has a contract to buy it, that's correct.

MR. REIS: Mr. Chairman, per our discussion after the meeting last, at the last meeting, I will be recusing myself from this determination in this particular situation.

MR. NUGENT: Okay.

MR. TORLEY: Accept a motion on this matter? Mike, do you have anything you want to bring up?

MR. KANE: No, I read the minutes.

MR. NUGENT: There's no water or sewer available for this lot?

MR. LYONS: No.

MR. NUGENT: None proposed, you don't know of anything, right?

MR. BABCOCK: No.

MR. TORLEY: Not out there, you have to run the sewer line underneath the railroad tracks.

MR. NUGENT: I don't know. I know what we did the last time I was here. I kind of got the same feeling that Mr. Bloom has about if the Town would take the lot over as whatever but whoever owned it regardless of how he got it he's going to pay taxes the rest of his life.

MR. TORLEY: But that, you know, if a lot doesn't meet, it's 11,000 square feet short, significantly short in a bad spot with a lot of wet area on the lot.

MR. BLOOM: If I may, Mr. Torley.

MR. TORLEY: I've been out on the lot in 1991 and wandered through there.

MR. BLOOM: If I may, it's not in wetlands area, it's not in a flood plain and my client was out there after the tremendous rainstorm we had a few weeks back and there was no runoff, it was clean, respectfully.

MR. NUGENT: I'll accept a motion.

MR. TORLEY: As stated before, since all motions must be in the positive sense, I move we grant Mr. Gargiuolo his requested variance.

MR. KANE: Second it.

ROLL CALL

MR. KANE AYE
MR. REIS ABSTAIN
MR. TORLEY NO
MR. NUGENT AYE

MR. TORLEY: Motion fails for lack of three positive votes.

MR. NUGENT: Hold on just one second.

(Discussion was held off the record)

MR. BLOOM: Thank you.

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Data	1 12401		, 19
Date	 	******	, 17

TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE NEW WINDSOR, NEW YORK 12553

то			DR.
	Frances Roth		
	IGB N. G. TOM	t was to the second	
	Newburgh, N.Y. 12550		

DATE		CLAIMED	ALLOWED
12/11/00	Zoning Board 11/4	75 02	
	Zuning Board M/Kg Misc - 2		
	Locksword - 5	·	
-	Stortecky_3 Gargiulo/Lyons-11, 49.50.		
	Gargiulo/Lyons -11/, 49.50.	49 50	
		124 50	



PUBLIC HEARING:

GARGIULO/LYONS

MR. NUGENT: Request for 11,875 sq. ft. lot area for construction of a single-family residence on east side of Toleman Road in an R-3 zone.

Mr. Tim Lyons appeared before the board for this proposal.

Is there anyone in the audience for this MR. NUGENT: application.

What I'm circulating is a sign-up sheet so MR. TORLEY: we can have your name correctly for the record.

MS. CORSETTI: For the record, Mr. Chairman, we sent out 13 notices to adjacent property owners on November 11, 2000.

For the record, my office is involved in the sale of this property.

Can you make an unbiased decision? MR. NUGENT:

I believe I can with your acceptance and MR. REIS: acknowledgment.

MR. NUGENT: As long as it's in the record.

MR. LYONS: I need 11,000 square feet to build a two bedroom home, I'm looking to build it, I've made, I meet all the setbacks for the house, for the well, the septic, the only problem is it's shy 11,000 square feet for the zoning, it's one acre.

MR. KRIEGER: Does it have sewer or septic system?

MR. LYONS: Septic system and well.

MR. TORLEY: How did you come to acquire the property? You're the owner of the property?

MR. LYONS: No, Mr. Gargiulo.

MS. CORSETTI: He's the contract purchaser, we have on file a proxy from the owner.

MR. LYONS: I'm purchasing it, I have, the survey shows a way out, the house, all the setbacks, the well and the septic clears everything, everything, if it's not in wetlands, it all works out just shy 11,000 square feet.

MR. NUGENT: Have you tried to contact any of the adjacent property owners to gain additional property?

MR. LYONS: No.

MR. TORLEY: Are you aware of the history of the property?

MR. LYONS: A little bit.

MR. TORLEY: Including its previous appearance before the zoning board.

MR. LYONS: No, I know that it was brought before the board before.

MR. TORLEY: Brought before the board before for area variances in 199, Andy, do you have the file here?

MR. NUGENT: I have it right here, '91.

MR. LYONS: Yeah, but they could have been trying to put a--

MR. TORLEY: Single-family house.

MR. LYONS: But it could be 40 foot.

MR. TORLEY: Do we want to enter that previous finding into the record?

MS. CORSETTI: Everything is in the record.

MR. TORLEY: For this hearing.

MR. NUGENT: Don't need it, it's already in the record.

MS. CORSETTI: It's in our file.

MR. TORLEY: This piece of property was in for an area variance before and it was turned down so what's changed?

MR. LYONS: I don't know what it was turned down before for.

MR. TORLEY: Turned down for a single family home.

MR. LYONS: It might, the setbacks.

MR. TORLEY: The lot area variance was considered too large.

MR. LYONS: Well, I went all the way, I laid out the house on it, I laid the septic out, I made sure all the setbacks worked before I even brought it to the board, I actually made the house even smaller to make sure.

MR. TORLEY: The property's the same size as it was before, the zoning code is the same requirements as it was before it was turned down before, can you give us a reason why we should approve it now?

MR. LYONS: Well, the owner doesn't have any land around it and other than that, the only way to make it work would be to purchase land around it and it's just locking it up, it will be this way forever.

MR. NUGENT: It's unfortunate because there's really nothing the board can do with it.

MR. REIS: Are you aware where this sits, Larry?

MR. TORLEY: Yes.

MR. REIS: Correct me if I'm wrong if we can create, besides the fact that we're involved with the selling of the property, it's not going to change my life, I'm just looking at it as unbiased and as objective as I'm able, but with due respect to the land to create the

highest and best use, what's this, a two bedroom unit?

MR. LYONS: Two bedroom.

MR. REIS: And if it doesn't impact the environment or the neighborhood.

MR. TORLEY: Well, let's see what the public has to say.

MR. REIS: Can we open it up to the public?

MR. NUGENT: If we're ready to do that.

MR. TORLEY: I have no other questions.

MR. MC DONALD: I'm ready.

MR. NUGENT: At this time, I'd like to open it up to the public, try not to be repetitious, state your name and address so that, and loud enough so that the recording secretary can hear you.

MR. GORDON RAUER: My name is Gordon Rauer, R-A-U-E-R, I'm the president of the Little Britain Civic Association, a civic association that has been around about ten years, we pop up when we feel evil things are being perpetrated in our community. Unless there's a compelling reason for down zoning, our association believes there is no reason to grant this variance. We don't see any compelling reason why the western end of the town should have a down zoned piece of property. There are additional vacant pieces of property in the community, in the immediate community, and we're not excluding anybody from the community as a result of We're sorely concerned our entire civic association which is a significant number of people in the western part of the town that this down zoning is being entertained. The people here are immediate homeowner's who have the notice, there are additional concerns aside from the down zoning which I know this board rarely grants and I know the town has been very protective of its zoning as it should be. main issues here is the railroad tunnel and for those of us who drive Toleman Road, that tunnel is at best a

cisaster and at worst, an accident, okay, we know that the railroad will do zero about changing this tunnel, I mean, that's a given. Toleman Road is not a high speed road, that's a very bad turn and now we're creating a piece of property next to the tunnel, has to have a oriveway, okay, there are school buses, there are all kinds of safety issues involved here. We're not qetting into drainage, there's wetlands, we're not getting into the fact that the train is at the second floor level, we don't feel that with the quality of life our community offers that this piece of property should actually be built on, that is an active rail line and CSX is planning a lot more freight in this community. And there will be a lot more trains coming Now, there's an obligation, generic through there. obligation by the town to protect its present citizens and potential citizens, we feel that before a down zoning should take place on this, that the board and I know many of you and you certainly are, do not do things lightly, but take very strong consideration as to the consequences of down zoning this piece of property. Thank you.

MR. NUGENT: Anyone else?

MR. RACKOWIECKI: My name is Joe Rackowiecki, I own the property in the back, I'm a dairy farmer, there's about 15 acres of swamp that's adjoining this. I have lived I don't know when it was filled but there all my life. it's just a wet hole that was filled in at sometime and I can't see, I don't know, I'm not a objecting if somebody builds a house but there gets to be a point where you fill wet holes in and put the house on it and it's getting to be too many of those around, like I said, there's wetlands, state wetlands that's probably less than a quarter of a mile from there cause I've got about 15 acres of it in my swamp on the farm and there's a creek that runs, I don't know if it's in the back of this property or whatever, but there's a creek that runs under the railroad there, probably a four or five foot culvert because I used to play in there when I was a kid. It concerns me that there's low ground, poorly drained ground, it's been filled in at sometime and this is what we're trying to build a house on.

MR. NUGENT: Okay, thank you. I'm Diane Tuttle, I'm two houses from the tunnel. My concern would be safety, if there's a house on this property, it's at the mouth of the tunnel directly at the mouth of the tunnel, if there are children in this home a school bus cannot stop there, school bus needs to be seen and if a victim whoever buys this home has children, they'll not pick those children up and the buyer will not have this information until it's their problem. We're worried about safety and really concerned for quality of life in that area if there was a house there. Thank you.

MR. NUGENT: Okay, anyone else like to speak?

MR. SHARP: My name is William Sharp and I live at 197 Toleman Road, which is 3 houses away from the tunnel. And my point of view is from a public safety point as well, I have lived if this town since 1977, not necessarily on this road, I have worked with the police department as an auxiliary officer, I know that from a public safety standpoint that road, Toleman Road in itself has a high incidence of accidents, the. area on Toleman Road tends to ice up very quickly. you do a survey with the police department using Toleman Road as the field of entry, you'll see that there are numerous accidents that have taken place on that road in or about the tunnel trestle. from a public safety standpoint, I think it's not a good move. Thank you.

MR. NUGENT: Thank you. Anyone else?

MS. SAINT-PRIX: Nadir Saint-Prix. Besides the safety issue, they have been trying to sell this property for a while now and nobody seems to be interested in buying it, now they're trying to build a house to try to sell it most probably.

MR. LYONS: This is for my own, I'm not selling it.

MS. SAINT-PRIX: Okay, so, I mean, to me, if they end up selling it, it's like nobody is going to want that piece of property if they haven't bought it before.

MR. NUGENT: Thank you.

MR. SAINT-PRI: My name is Serge Saint-Prix, I'm the husband of Nadir Saint-Prix. Every morning I go out of my driveway, that property will be almost across, actually, it could be across my own property, and every morning I go out of my driveway and I really, really have to look on both directions. I mean, I'm adding the idea of the concept of safety, but I'm one who's just right before the tunnel and sometimes, I have to put hard brake in order to make sure that I come out of my driveway safely. Again, I want to add the argument of safety, last winter, during a snow storm, a driver skidded and it took our mailbox away because of the curve and he just skidded and just removed our mailbox so this is an area again that's very dangerous. Thank you.

MR. NUGENT: Thank you.

MR. BONAMENE (PHONETIC): Joe Bonamene, just again, on the traffic on Tolman, our neighbors in Washingtonville also where Toleman Road and Brotherhood Winery dump out into Route 94, there's things in the papers indicating the problems of the traffic getting out onto 94, if we change that and we had more traffic going into there, you won't even be able to get out of that part of the town, it's already a problem and to increase it will just bring it to a standstill. There's no way to increase Washingtonville and 94 where it comes in, there's homes on both sides and businesses so that's not going to be able to be changed and you're just going to add more problems to something that can't be fixed already.

MS. TUTTLE: Would we be permitted to submit photos so you can get a good idea of the blind curves?

MR. TORLEY: Never turn down information.

MR. NUGENT: Where is the lot?

MS. TUTTLE: At the mouth of the tunnel on this side.

MR. LYONS: This is from the tunnel looking out, they keep saying it's a safety problem, but from this where,

he was saying that it is a problem, he's on the other side where he can't see around either side but this one is on the opposite side where you can see down the tunnel clearly, you're coming out right here is the driveway, you're coming out, you can see clearly all the way down the tunnel and you can see clearly all the way up the curve from the driveway, it's 290 feet to the start of the bend and where you're driving a car, it's 480 feet to the driveway that you start to see it. It's clearly not a problem at all for traffic and it's the property itself isn't creating the problem, it's the tunnel creating the traffic where I mean I'm putting a house on this property has nothing to do with the fact that the tunnel's too small, you can only get one car through it, it has no, the property has no, nothing to do with that. And as far as people being around it, I've got pictures that show the panoramic.

MR. NUGENT: Is there anyone else in the audience that would like to speak?

MR. DEREVENSKY: Richard Derevensky, I live right next to the property over there. I have 14 acres right behind your farm, actually, and it really is not very good property. I mean, seemed kind of self-serving but otherwise almost like we're trying to save you from yourself. The property that I own right up to your property is very, very wet, any septic that's going to come out of there is going to be in the wetlands basically, DEC wetlands behind the property there, it's not really buildable, I mean, I'm sure you know that even from, aside from a safety aspect environmentally, it's not a good idea.

MR. LYONS: They keep bringing up the wetlands.

MR. DEREVENSKY: It's all wetlands, you can't walk out there and not sink up to your ankles in anything other than what's been filled so it's not a good piece of property there.

MR. NUGENT: Anybody else?

MS. RAPSID (PHONETIC): My name is Gina Rapsid, 191 Toleman Road, we're new residents, my husband and I,

and we have only been here for a month. I don't really know too much about the land in the area that they're talking about, but I want to ditto all the safety issues that were stated. I have been driving through that area on Tolman and through the tunnel for the month that I have been here, December 2 made a month and I'm a nervous wreck, I'm like high-beaming like forever to make sure other cars are not coming there, then this morning it was ice, I'm like oh my God, I can't see anyone being, you know, anywhere near that, someone building a house near that, I really just can't I couldn't believe it when I first moved around here and I saw only one car could fit, I didn't even notice this, here I am just driving, other car's honking me to death, oh my God, we both can't fit, so I can't even picture it. I don't know much about the land issue but as far as safety, I'm behind everybody else with safety, I really don't see anymore houses on Toleman Road, like especially near the tunnel. you.

MR. NUGENT: Anyone else? I would like to at this time close it to the public, close the hearing to the public, open it back up to the board members and you have your chance now to review anything they have to say.

Yeah, they keep bringing up the safety MR. LYONS: problem but safety is not the property, it's the bridge, the tunnel, the property has nothing to do with the tunnel and it's by putting a house, it wouldn't create anymore traffic to disrupt the traffic flow through the tunnel by putting a house or not putting the house, it's not going to affect the problem with the tunnel, that's the way it's built and putting a house there has, it will do nothing to affect the tunnel, they keep bringing that up and they keep bringing up the wetlands. I have a map showing that this is the property and the wetlands are nowhere near the property. That's it, I've got pictures of panoramic view of all the way around it, there's no houses to be seen anywhere that it would disrupt anyone that would create an eyesore and they were talking about the tracks being a second level, it's a one level, it's not a second level. So, I mean, that's not a problem and the, I mean this house they make like this is going to disrupt all of Toleman Road for bringing traffic into Washingtonville, it's a two bedroom one family, it's two cars, two cars isn't disrupting Washingtonville. As far as safety bringing it back because I want it to be known.

MR. NUGENT: You're only in contract to buy it, you haven't bought it yet?

MR. LYONS: No.

MR. NUGENT: Any further questions by the board?

MR. TORLEY: No. Entertain a motion on this matter?

MR. NUGENT: Yes, I will.

MR. TORLEY: Since all the motions must be in the affirmative, I move that we grant Mr. Lyons and Gargiulo his requested lot area variance.

MR. MC DONALD: Second it.

MR. KRIEGER: Wait, before do you that, Mr. Lyons mentioned to you earlier on that he wanted to reserve his right to ask that the hearing be adjourned so his attorney could be here and that should perhaps--

MR. TORLEY: That being the case, I move we adjourn the hearing till that point.

MR. NUGENT: He hasn't asked for that yet.

MR. TORLEY: I thought you did, I'm sorry.

MR. LYONS: I would.

MR. NUGENT: Okay, do we need a motion for that?

MR. KRIEGER: To table it, yes.

MR. NUGENT: We have to.

MR. TORLEY: I withdraw my motion and move we table the

matter.

MR. MC DONALD: Second it.

ROLL CALL

MR. TORLEY AYE
MR. MC DONALD AYE
MR. REIS AYE
MR. NUGENT AYE

MR. KRIEGER: Point of clarification that was tabled till the next meeting, right?

MS. CORSETTI: January the 8, 2001.

MR. TORLEY: As a point of information form the public, public hearing is closed on this matter, you're more than welcome to come back but there's no more public input.

	ALL PHASE STRUCTURE I, LLC. PH. 914-497-3856		1129
	25 SOUTH STREET, APT. 2F-R WASHINGTONVILLE, NY 10992	DATE 11/27/00	2 9- 1/213
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FOR /o/men	1129# 01021300019: 94238 4	400311	

LYONS, TIMOTHY

MR. NUGENT: Request for 11,975 square foot lot area variance to construct a single-family dwelling on Toleman Road in an R-3 zone.

Mr. Timothy Lyons appeared before the board for this proposal.

MR. LYONS: I need to, the lot that I am building on is shy of an acre, I need an acre to put a house up and did a survey, house conforms with all the setbacks, the septic and the well, the only thing is that it's shy of an acre.

MR. NUGENT: Because you didn't have sewer and water you need full 40,000 square feet?

MR. LYONS: Yeah, I have a septic and a well, it all conforms, I meet everything, but the lot's too small, there's no land around that he can make bigger, to expand to it make it work.

MR. REIS: Want to disclose that I am involved with the sale, I'm the listing agent.

MR. TORLEY: So the house is not being constructed now, you're looking to purchase the property, is that it?

MR. LYON: Yes.

MR. KANE: But nothing else could be built on that piece of property, Mike, can anything else be built on that piece of property?

MR. BABCOCK: No, it's a single family zone.

MR. KANE: He's trying to build a single family house.

MR. TORLEY: But he's short 25 percent of the space.

MR. LYONS: I even shortened the house, we went with a different place, it's a 40×28 , we put the, for the survey I made it even shorter, I went 30×32 , so it would clear all boundaries, but it's just, can't do it.

MR. NUGENT: You can get the house on the lot.

MR. LYONS: Everything fits.

MR. NUGENT: You have separations between septic and well?

MR. LYONS: Yes.

MR. TORLEY: Accept a motion?

MR. NUGENT: Yes.

MR. TORLEY: Move we set up Mr. Lyons for his requested lot area variance.

MR. KANE: Second the motion.

ROLL CALL

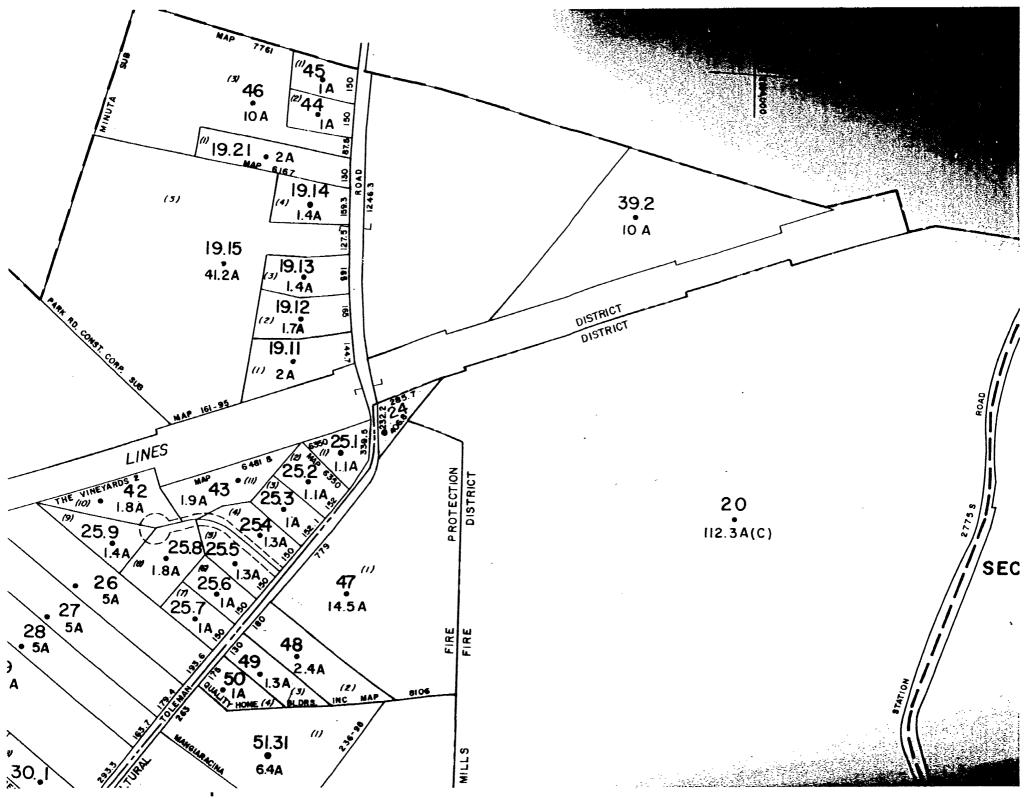
MR. REIS AYE
MR. KANE AYE
MR. TORLEY AYE
MR. NUGENT AYE

MS. CORSETTI: I will also need from you a proxy from the owner.

MR. LYONS: Do you need pictures?

MS. CORSETTI: Yes, bring them when you come to the public hearing.

MR. KRIEGER: Those are the criteria, you heard what I said.



COUNTY OF ORANGE:STATE OF NEW YORK)R X
In the Matter of the Application for Variance of	AFFIDAVIT OF
# 80-60.	SERVICE BY MAIL
# <u>80-60.</u>	×
STATE OF NEW YORK)) SS.: COUNTY OF ORANGE)	
PATRICIA A. CORSETTI, being duly sworn, depo	oses and says:
That I am not a party to the action, am over 18 7 Franklin Avenue, New Windsor, N. Y. 12553.	years of age and reside at
That on the <u>If</u> day of <u>November</u> , 20 <u>ee</u> addressed envelopes containing the Public Hearing Not with the certified list provided by the Assessor regarding for a variance and I find that the addresses are identication than caused the envelopes to be deposited in a U.S. Do of New Windsor.	ice pertinent to this case g the above application al to the list received. I
Notary	O. Corpollic
Sworn to before me this	
day of, 20	
Notary Public	

Town of New Windsor 555 Union Avenue New Windsor, NY 12553 (845) 563-4611



RECEIPT #881-2000

11/27/2000

All Phase Structure L, Ltc #c0-60

Received \$ 50.00 for Zoning Board Fees, on 11/27/2000. Thank you for stopping by the Town Clerk's office.

As always, it is our pleasure to serve you.

Dorothy H. Hansen Town Clerk

TOWN OF NEW WINDSOR ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

			# 0060	
			Date: 11/27/00	-
(a) (b) (c)	licant Information: Michael Garquilo 7705 (Name, address and pho Innothe Lyons to dox IL (Name, address and pho Name, address and pho Name, address and pho Name, address and pho Name, address and pho (Name, address and pho	me of purchaser or low My.	essee) (61 6920)	7-38
II. App	plication type:			
(_) Use Variance	()	Sign Variance	
(X	_) Area Variance	()	Interpretation	
(a) (b) (c) (d) (e) (f)	operty Information: (Zone) (Address) What other zones lie was pending sale or application? When was property pure has property been substituted by the substituted by the Buildi Is there any outside sproposed? Describe in	within 500 ft.? NOVE lease subject to ZBA chased by present own divided previously? ject of variance prev Violation been issuing/Zoning Inspector? storage at the proper	ner? <u>YES</u> . Viously? <u>YES</u> . Hed against the	13 [±] 1
IV. Use (a)	Variance. //A Use Variance requested Section, Tabl to allow: (Describe proposal)	e of Regs	., Col,	

hardship. Describe why you feel unless the use variance is granted	unnecessary hardsh d. Also set forth	nip will result n any efforts you
have made to alleviate the hardsh	ip other than this	s application.
	· ·	
(c) Applicant must fill out a Assessment Form (SEQR) with this a		Environmental
(d) The property in question County Agricultural District: Yes	is located in or s	within 500 ft. of a
If the answer is Yes, an agricultualong with the application as well within the Agricultural District list from the Assessor's Office.	l as the names of	all property owners
V. Area variance: (a) Area variance requested if Section 48-12, Table of A	from New Windsor 2	Coning Local Law, Regs., Col
Requirements Min. Lot Area 43,560 Sq.ft. Min. Lot Width Reqd. Front Yd.	Proposed or Available 31,585 sq. ft.	Variance Request //,975 sg.ft.
Reqd. Side Yd		
Reqd. Rear Yd Reqd. Street Frontage* Max. Bldg. Hgt		
Min. Floor Area*	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	
* Residential Districts only	1,,	

V(b) In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance; (3)

propose physica and (5) Describ area va	the requested area variance is substantial; (4) whether the d variance will have an adverse effect or impact on the l or environmental conditions in the neighborhood or district; whether the alleged difficulty was self-created. e why you believe the ZBA should grant your application for an riance: Bulding Allone and Being occupied by Someone will have no effect apact on The neighborhood property occupied by and way create This difficulty are property occupied and way create This difficulty are land 6when pages Taxes To land the cent use if the daint get and
	y attach additional paperwork if more space is needed)
	n Variance: MA Variance requested from New Windsor Zoning Local Law, Section, Regs.
Sig Sig Sig Sig	n
	Describe in detail the sign(s) for which you seek a e, and set forth your reasons for requiring extra or over size
	What is total area in square feet of all signs on premises ag signs on windows, face of building, and free-standing signs?
(a)	erpretation. No Interpretation requested of New Windsor Zoning Local Law, Section, Table of Regs., Col Describe in detail the proposal before the Board:
/III. Ad	ditional comments:

(a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or

fos	raded and that the intent and spirit of the New Windsor Zoning is tered. (Trees, landscaping, curbs, lighting, paving, fencing, eening, sign limitations, utilities, drainage.) All copes will be med to the higher transaction Position and Continued will not effect any nighbor near Property Homer and Septic meet all set Backs, including well from Septic The only Problem is The Long is The
IX.	Attachments required: Copy of referral from Bldg./Zoning Insp. or Planning Bd. Copy of tax map showing adjacent properties. Copy of contract of sale, lease or franchise agreement. Copy of deed and title policy. Copy(ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question. Copy(ies) of sign(s) with dimensions and location. Two (2) checks, one in the amount of \$50.00 and the second check in the amount of \$50.00 and the second of NEW WINDSOR. Photographs of existing premises from several angles.
x.	Affidavit.
	Date: 1/27/80.
	TE OF NEW YORK)) SS.: NTY OF ORANGE)
appl to t unde acti	The undersigned applicant, being duly sworn, deposes and states the information, statements and representations contained in this lication are true and accurate to the best of his/her knowledge or the best of his/or information and belief. The applicant further erstands and agrees that the Zoning Board of Appeals may take ion to rescind any variance granted if the conditions or situation sented herein are materially changed.
	(Applicant)
	PATRICIA A. CORSETTI Notary Public, State of New York No. 01BA4904434 Qualified in Orange County Commission Expires August 31, 200/.

(a) Public Hearing date: _____

	(b) Variance:	Granted ()	Denied ()	
	(c) Restriction	ons or conditions:		·
· 1 s				•
				

NOTE: A FORMAL DECISION WILL FOLLOW UPON RECEIPT OF THE PUBLIC HEARING MINUTES WHICH WILL BE ADOPTED BY RESOLUTION OF ZONING BOARD OF APPEALS AT A LATER DATE.

(ZBA DISK#7-080991.AP)

SUBMISSION OF APPLICATION FOR VARIANCE # 00-60.

ZONING BOARD OF APPEALS

TOWN OF MEW WINDSOR

STATE OF NEW YORK)	
COUNTY OF ORANGE)	
WINDSOR designated as t	tain parcel of land within the TOWN OF NEW ax map SECTION 56 BLOCK
OF ALLPHANCE COURTE	ACTHORIZE TIMETRY LYNKS (COMPANY NAME) to make an ZONING BOARD OF APPRALS as described in
Dated: 11/20/00 -	•
	(Signature of Owner)
	(Signature of Owner)
Sworn to before se this	

20 day of Novembe

Public

(2BA DISK#1-060895.PXY)

Date	 11/5/	συ	19	•:
	,, <u>,</u>		 , -,	••••

TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE NEW WINDSOR, NEW YORK 12553

TO	brown a man	DR
	168 N. Drury Lang	
<u>(</u>	168 N. Drury Lane Newburgh, N.Y. 12550	

DATE	CLAIM	(ED	ALLO	WED
1/13/00 Zening Board M/g Misc. 2	75	W		
Misc. 2				
Cactus Resorts - 16				
Duckworth -2				
Couz -2				
Coullagher - 2 Lyons - 2 9.00. Corallo - 3				
Lyons-2 9.00.				
Corallo -3		-		
acsis Foods-3	144	00		
-32				
Jame Heigent	319	N		
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